

2-3-2011

# Nelson v. State Clerk's Record Dckt. 40661

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IN THE SUPREME COURT OF THE STATE OF IDAHO

GREGORY JOSEPH NELSON,  
  
Petitioner-Appellant,  
vs.  
STATE OF IDAHO,  
  
Respondent.

Supreme Court Case No. 40661

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE LYNN G. NORTON

STATE APPELLATE PUBLIC DEFENDER  
  
ATTORNEY FOR APPELLANT  
  
BOISE, IDAHO

LAWRENCE G. WASDEN  
  
ATTORNEY FOR RESPONDENT  
  
BOISE, IDAHO

Gregory Joseph Nelson, Plaintiff vs State Of Idaho, Defendant

Date	Code	User		Judge
2/3/2011	NCPC	CCNELSRF	New Case Filed - Post Conviction Relief	District Court Clerk
	CHGA	CCNELSRF	Judge Change: Adminstrative	Darla S. Williamson
	MOTN	CCNELSRF	Motion for Leave to Proceed In Forma Paupies Title 19, Chapter 8, Idaho Code, I.C. 19-4902(g)	Darla S. Williamson
	PETN	CCNELSRF	Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing - I.C. Section 19-4902(b)	Darla S. Williamson
	AFFD	CCNELSRF	Affidavit of Gregory Joseph Nelson in Support of Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing - I.C. Section 19-4902(b)	Darla S. Williamson
	BREF	CCNELSRF	Brief In Support of Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing - I.C. Section 19-4902(b)	Darla S. Williamson
2/4/2011	CERT	CCNELSRF	Certificate Of Mailing	Darla S. Williamson
2/8/2011	HRSC	DCKORSJP	Hearing Scheduled (Motion 03/03/2011 11:00 AM)	Darla S. Williamson
		DCKORSJP	Notice of Hearing	Darla S. Williamson
	ORDR	DCKORSJP	Order to Transport	Darla S. Williamson
2/9/2011	PROS	PRPETZDN	Prosecutor assigned Julianne Meehan	Darla S. Williamson
3/3/2011	DCHH	DCKORSJP	Hearing result for Motion held on 03/03/2011 11:00 AM: District Court Hearing Held Court Reporter: Vanessa Gosney Number of Transcript Pages for this hearing estimated: Less than 200	Darla S. Williamson
	HRSC	DCKORSJP	Hearing Scheduled (Motion 04/14/2011 11:00 AM)	Darla S. Williamson
3/9/2011	ORDR	DCKORSJP	Order to Transport	Darla S. Williamson
4/14/2011	DCHH	DCKORSJP	Hearing result for Motion held on 04/14/2011 11:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100	Darla S. Williamson
	HRSC	DCKORSJP	Hearing Scheduled (Status 07/21/2011 11:00 AM)	Darla S. Williamson
4/22/2011	STIP	DCKORSJP	Stipulation Regarding Sealing, Transportation & DNA Testing of Trial Evidence in CRFE0000-21080	Darla S. Williamson
	ORDR	DCKORSJP	Order Based on Stipulation Regarding Sealing, Transportation and DNA Testing of Trial Evidence in CRFE0000-21080	Darla S. Williamson
7/8/2011	STIP	CCRANDJD	Stipulation Regarding Payment for Testing	Darla S. Williamson
7/12/2011	ORDR	DCKORSJP	Order Regarding Payment for Testing in CRFE0000021080	Darla S. Williamson

Gregory Joseph Nelson, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
7/21/2011	DCHH	DCKORSJP	Hearing result for Status scheduled on 07/21/2011 11:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Status 09/22/2011 11:00 AM)
8/3/2011	SUBC	CCMASTLW	Notice of Substitution Of Counsel (Martin for Gregory Nelson)
9/22/2011	DCHH	DCKORSJP	Hearing result for Status scheduled on 09/22/2011 11:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Review Hearing 01/19/2012 11:00 AM)
10/13/2011	CHGA	CCNELSRF	Judge Change: Administrative
		CCNELSRF	Notice of Reassignment
10/17/2011	CHGA	CCNELSRF	Judge Change: Administrative
		CCNELSRF	Amended Notice of Reassignment
1/19/2012	DCHH	DCKORSJP	Hearing result for Review Hearing scheduled on 01/19/2012 11:00 AM: District Court Hearing Held Court Reporter: Kasey Redlich Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Review Hearing 02/02/2012 11:00 AM)
2/1/2012	ORDR	DCKORSJP	Order to Transport
2/2/2012	DCHH	DCKORSJP	Hearing result for Review Hearing scheduled on 02/02/2012 11:00 AM: District Court Hearing Held Court Reporter: Mia Martorelli Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Review Hearing 03/01/2012 11:00 AM)
	ORDR	DCKORSJP	Order Re: DNA Testing
3/1/2012	DCHH	DCKORSJP	Hearing result for Review Hearing scheduled on 03/01/2012 11:00 AM: District Court Hearing Held Court Reporter: Fran Morris Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Review Hearing 04/26/2012 11:00 AM)
3/19/2012	CHGA	CCTOMPMA	Judge Change: Administrative (batch process)
		CCTOMPMA	Notice of Reassignment



Gregory Joseph Nelson, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
4/26/2012	DCHH	DCKORSJP	Hearing result for Review Hearing scheduled on 04/26/2012 11:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Motion 06/28/2012 11:00 AM)
4/27/2012	ORDR	DCKORSJP	Scheduling Order
5/2/2012	ORDR	DCKORSJP	Order to Transport
5/29/2012	ANSW	CCBOYIDR	Answer to Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing (Meehan for State of Idaho)
6/15/2012	NOTC	CCAMESLC	Certified Notice of Discharge for Cause Re: Representation by Theresa A Martin Attorney at Law [file stamped 06/12/2012]
6/21/2012	MOTN	TCORTEJN	Motion for an Order Exparte
	MOTN	TCORTEJN	Motion to Continue June 28,2012 Hearing
	MOTN	TCORTEJN	Motion to Review Attorneys Representation
	MOTN	TCORTEJN	Motion to Dismiss Criminal Charges
	MOTN	TCORTEJN	Supplemental Motion for Post Conviction Relief
	AFFD	TCORTEJN	Affidavit
	RSPN	TCORTEJN	Verified Response to Answer to Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA)Testing
6/27/2012	MOTN	CCTHERTL	Motion to Amend the Order Regarding Sealing, Transportation and DNA Testing
	MOTN	CCTHERTL	Motion for Summary Dismissal
	MOTN	CCTHERTL	Motion to Take Judicial Notice
	MOTN	CCTHERTL	Motion to Seal Respondent's Exhibit # 1 Under Idaho Administrative Rule 32 (h)
6/28/2012	DCHH	DCKORSJP	Hearing result for Motion scheduled on 06/28/2012 11:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Motion 07/05/2012 11:00 AM)
7/2/2012	MOTN	CCSWEECE	Supplement to Supplemental Motion for Post-Conviction Relief
	ORDR	DCKORSJP	Order to Transport
7/5/2012	DCHH	DCKORSJP	Hearing result for Motion scheduled on 07/05/2012 11:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100

Gregory Joseph Nelson, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
7/5/2012	HRSC	DCKORSJP	Hearing Scheduled (Motion 09/06/2012 11:00 AM)
7/6/2012	ORDR	DCKORSJP	Order to Seal Exhibit #1 of the Respondent's Motion for Summary Dismissal
	ORDR	DCKORSJP	Orders on Various Motions Filed June 2012 and Amended Scheduling Order
	MOTN	CCRANDJD	Motion to Strike
	NOTC	TCORTEJN	Certified Notice fo Lodging Re: Forensic Biology Report Dated June 28, 2011
7/11/2012	MOTN	CCWATSCL	Motion to Strike Amended Order Based on Stipulation Regarding Sealing, Transportation and DNA Testing of Trial Evidence in CRFE00000021080
7/18/2012	PETN	CCWEEKKG	Petitioner's First Affidavit in Opposition to Respondent's Motion for Summary Dismissal
8/8/2012	ORDR	DCKORSJP	Order to Transport
8/9/2012	MOTN	MCBIEHKJ	Motion to Extend Time
8/13/2012	ORDR	DCKORSJP	Order to Extend Time
8/29/2012	AFFD	CCVIDASL	Petitioners Second Affidavit in Opposition to Respondents Motion for Summary Dismissal
9/5/2012	ORDR	DCKORSJP	Order Barring Petitioner From Filing Documents
	ORDR	DCKORSJP	Amended Order Based on Stipulation Regarding Sealing, Transportation and DNA Testing of Trial Evidence
9/6/2012	DCHH	DCKORSJP	Hearing result for Motion scheduled on 09/06/2012 11:00 AM: District Court Hearing Held Court Reporter: Mia Martorelli Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Motion 10/25/2012 11:00 AM)
9/18/2012	ORDR	DCKORSJP	Order to Transport
10/25/2012	DCHH	DCKORSJP	Hearing result for Motion scheduled on 10/25/2012 11:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100
	HRSC	DCKORSJP	Hearing Scheduled (Motion 12/06/2012 11:00 AM)
	STIP	DCKORSJP	Stipulation to Extend Time
	ORDR	DCKORSJP	Order to Extend Time (until Nov. 8, 2012)
10/29/2012	ORDR	DCKORSJP	Order to Transport
11/1/2012	OBJT	CCHEATJL	Objection To Respondent's Motion For Summary Judgment

Date: 2/26/2013

**Fourth Judicial District Court - Ada County**

User: CCTHIEBJ

Time: 10:35 AM

ROA Report

Page 5 of 5

Case: CV-PC-2011-02496 Current Judge: Lynn G Norton  
Gregory Joseph Nelson, Plaintiff vs State Of Idaho, Defendant

Gregory Joseph Nelson, Plaintiff vs State Of Idaho, Defendant

Date	Code	User	Judge
12/6/2012	DCHH	DCKORSJP	Hearing result for Motion scheduled on 12/06/2012 11:00 AM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100 Lynn G Norton
12/12/2012	DEOP	DCKORSJP	Decision and Order Granting Summary Dismissal Lynn G Norton
	JDMT	DCKORSJP	Judgment Lynn G Norton
	CDIS	DCKORSJP	Civil Disposition entered for: State Of Idaho, Other Party; Nelson, Gregory Joseph, Subject. Filing date: 12/12/2012 Lynn G Norton
	STAT	DCKORSJP	STATUS CHANGED: Closed Lynn G Norton
1/23/2013	NOTA	TCWEGEKE	NOTICE OF APPEAL Lynn G Norton
	APSC	TCWEGEKE	Appealed To The Supreme Court Lynn G Norton
1/30/2013	MOTN	CCMEYEAR	Ex Parte Motion to Appoint State Appellate Public Defender on Direct Appeal Lynn G Norton
2/4/2013	ORDR	DCKORSJP	Order Appointing State Appellate Public Defender on Direct Appeal Lynn G Norton
2/26/2013	NOTC	CCTHIEBJ	Notice of Transcript Lodged - Supreme Court Docket No. 40661 Lynn G Norton

000006

176  
Gregory J. Nelson  
26201, 1C1-0  
381 W. Hospital Drive  
Crosby, Idaho 83544  
Pro Se Petitioner

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 9 P.M.

FEB 03 2011

CHRISTOPHER D. RICH, Clerk  
By NATALIE FARACA  
DEPUTY

DARLA WILLIAMSON

CV PC 1102436

In the District Court of the Fourth Judicial  
District of the State of Idaho, In and for the County of Ada

Gregory Joseph Nelson,  
Petitioner,

vs.

State of Idaho,  
Respondent.

Case No. FE-0000-21080

Petition for the Performance  
of Forensic Deoxyribonucleic  
Acid (DNA) Testing -

IC. Section 19-4902(b)

Now comes the Petitioner, Gregory J. Nelson, pursuant to Idaho Code Section 19-4902(b), and therefore requests this Honorable Court to issue an appropriate order, whereby directing the Idaho State police forensic services to perform forensic DNA testing of State's Exhibit 2,<sup>1</sup> the "rape kit",<sup>1</sup> and State's Exhibit 6,<sup>1</sup> "underwear",<sup>1</sup> admitted as evidence in case no. HCR 21080, over the defendant's objections, in. A.C. No. 22666, pp. 726-727.

This Petition is made and based upon the affidavit of Gregory J. Nelson, and Brief in support of Petition for the Performance of Forensic DNA Testing. said affidavit, and said Brief, are being filed contemporaneously herewith.

<sup>1</sup> and <sup>all</sup> the extracts made therefrom, which are part of the kit and the underwear.  
Petition for the Performance of Forensic DNA Testing - 1

000007

State's Exhibit 2,<sup>1</sup> and State's Exhibit 6,<sup>1</sup> were not subjected to the forensic DNA testing now requested.

The current technology for the instant requested forensic DNA testing of State's Exhibit 2,<sup>1</sup> and State's Exhibit 6,<sup>1</sup> ~~was~~ <sup>was</sup> not available at the time of trial in 1995, August.

Identity was an issue in the trial, August, 1995, which resulted in the instant petitioner's conviction. In. p. 796, ls. 17-25; S.C. No. 22666 / HCR 21080.

The instant petitioner does produce sperm, contained in the semen.

State's Exhibit 2, and State's Exhibit 6, were subjected to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material respect, as was upheld on appeal in Supreme Court case numbered 22666, and, as determined by the trial court. In. pp. 726-727; S.C. No. 22666.

The result of the testing of State's Exhibit 2, and State's Exhibit 6, as requested herein, has the scientific potential to produce new, noncumulative evidence that will show that it is more probable than not that the petitioner is innocent of the charged offenses.

The forensic DNA testing of state's Exhibit 2<sup>1</sup> and state's Exhibit 6<sup>1</sup>, requested herein, will likely produce admissible results under the Idaho rules of evidence.

Wherefore, this court should enter the requested order, whereby directing the Idaho State Police forensic services to perform forensic DNA testing of state's Exhibit 6<sup>1</sup>, underwear<sup>1</sup>, and state's Exhibit 2<sup>1</sup>, the rope hit<sup>1</sup>, then, order the appropriate relief and release petitioner from the custody of the state Board of correction.

Respectfully submitted on this 31<sup>st</sup> day of January, 2011.

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner

I and the extracts were therefrom, which are part of the hit and underwear.

198.

NO. \_\_\_\_\_  
A.M. 9 FILED P.M. \_\_\_\_\_

FEB 03 2011

CHRISTOPHER D. RICH, Clerk  
By NATALIE FARACA  
DEPUTY

Gregory J. Nelson  
26.201, 1C1-O  
381 W. Hospital Drive  
Orfino, Idaho 83544  
Pro se Petitioner

CV PC 1102436

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and For the County of Ada

Gregory Joseph Nelson

Petitioner,

vs.

State of Idaho,

Respondent.

Case No. FE-0000-21080

Motion For Leave

To Proceed In

Former Paupers

Title 19, Chapter 8,

Idaho Code

I.C. 19-4902(g)

NO FILING FEE  
REQUIRED

Now comes the petitioner, above-named,  
and hereby moves this Honorable court  
for it order, whereby directing that  
petitioner be permitted to proceed, pursuant  
to Chapter 8, title 19, Idaho Code,  
for the purposes of DNA testing, pursuant  
to Idaho Code section 19-4902(b)(g).

This motion is made pursuant to the

Motion For In Former Paupers Status - 1

000010

WJ /

records and files of ada count case  
numbered HCR 21080, Supreme Court  
case numbered 22606, the records  
and files of the instant case, and  
based upon Idaho Code section 19-4902(g),  
and the affidavit of Gregory D. Nelson,  
said affidavit is attached hereto and  
incorporated by reference herein.

wherefore, this Court should grant  
the instant motion and direct that the  
requested DNA testing be paid for at  
County expense, pursuant to 19-4902(g),  
Idaho Code.

Respectfully submitted on the 31st  
day of January, 2011.

Gregory D. Nelson  
Gregory D. Nelson  
Petitioner

affidavit

State of Idaho)

County of Clearwater }

Motion For In Forma Pauperis Status - 2



Gregory J. Nelson, after first being duly sworn upon his oath, deposes and says:

1. I am the Petitioner in the above-entitled action for DNA testing.
2. I was represented in case numbered HCR 21080, and Supreme Court case numbered 22666, by the Ada County Public Defenders Office at County expense.
3. I do not now have the funds for the requested DNA testing of State's Exhibits 2, and 6, and the extracts made therefrom.
4. Here is a list of my debts and assets:

Debts: \$5,000.00.  
assets: a) judgment in the amount of approximately \$30,000.00 after bankruptcy as creditor, in case no. CVDR9501380D, which is not currently collectible due to the poverty of the Defendant. I have one dependant, whom I haven't seen, since 1984, a child, then.  
Motion For In Forma Pauperis Status - 3

(b) Bank account at anchorage, alaska, balance unknown; I have ~~contacted the bank~~ and have received no response... so, I have been unable to make any withdrawals or deposits. Last known none of Bank: Bank of alaska - last activity - July, 1982.

(c) Institutional account: \$40.52

(c1) my income is composed of gifts from outside sources.

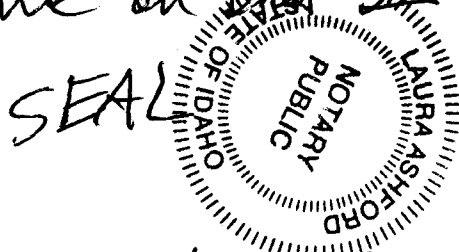
(d) I have no job and am currently incurring medical co-pay and need remainder of funds for supplements, and other items necessary for personal use.

(d1) the only property in my possession is what is allowed per IDOC.

Respectfully submitted on this  
3<sup>rd</sup> day of January, 2011

Gregory S. Nelson  
Affiant

Subscribed and sworn to before  
me on this 3<sup>rd</sup> day of January, 2011



Laura Ashford  
Notary Public for Idaho  
Residing at: Lewiston  
My Commission Expires: July 24, 2011

Motion for In Forma Pauperis Status - 4

FEB 03 2011

CHRISTOPHER D. RICH, Clerk  
By NATALIE FARACA  
DEPUTY

198  
Gregory J. Nelson  
26201, IC1-D  
381 W. Hospital Drive  
Orofino, Idaho 83544  
Pro Se Petitioner

CV PC 1102496

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and for the County of Ada

Gregory Joseph Nelson,  
Petitioner,  
vs,  
State of Idaho,  
Respondent.

Case No. FE-0000-21080  
Affidavit of Gregory Joseph Nelson  
In Support of Petition for the  
Performance of Forensic  
Deoxyribonucleic acid (DNA)  
Testing - I.C. Section 19-4902(b)

State of Idaho)

( ss:

County of Clearwater)

Gregory Joseph Nelson, after first being duly sworn  
upon his oath, deposes and says:

1. I am the Petitioner.
2. I am making this affidavit upon personal knowledge,  
and, personal information, and the record of HCR 21080.<sup>1</sup>
3. I am competent to testify to the information contained  
herein.
4. The information contained herein is true and correct.

Affidavit of Petitioner In support - 1

5. Petitioner's Exhibit (PE) 1, shows that Kori McNeil ("K.M."), the "complaining witness" at my trial, "denies vaginal or anal penetration", and the exam concluded, "0 external trauma". This examination occurred on February 6, 1994, the date of the incident alleged. Petitioner, that is, I was arrested on February 6, 1994; I have remained in custody since this date, and I have had no contact, whatsoever, with K.M. since February 6, 1994.<sup>2</sup> The 02/06/94 examination occurred at St. Alphonsus Hospital.

6. PE 2 shows K.M.'s birthdate to be "12/10/83", on "2/06/94", among other information. Her birthdate is 12/23/83.

7. K.M.'s "eyes are blue and her hair is like dishwater blonde". Supreme Court (S.C.) case numbered 27266, in. p. 23, lines 5-6, amended transcript on appeal.

"Your Honor, the girl who testified in this case (the complaining witness) did, in fact, have blue eyes and blondish hair". S.C. No. 22666, in. pp. 984-986, ps. 8-10. K.M. did have blondish hair and blue eyes on 2/6/94.<sup>3</sup>

8. PE 3 shows the girl examined on February 7, 1994, at St. Luke's CARES, to have brown eyes, brown hair, and a birthdate of "12-23-83", among other information. The examiner is listed as, Margaret Herbert PNP.

9. PE 4 is Margaret Herbert's typed report, from the worksheet listed as PE3. This typed report, also shows the girl examined on 02/07/94, to have, "brown hair and brown eyes", with a birthdate of "12/23/83", among other information.

<sup>2</sup> affidavit of Petitioner in support-2  
<sup>3</sup> except for my trial in 1995, 3 and, at trial.

10. PE 5 shows K.M. complained of, "vaginal pain"; [Petitioner] -  
"tried to make her take her clothes off, pt. resisted... tried  
to put pillow over pts. face + threatened her life.... tried  
to take pts. pants off + got them partially off + tried to  
force her to have sex  $\bar{c}$  him .... Pt. denied head, neck, or  
back pain, denied chest or abd. pain in extremities....  
Pts. friend advised pt. came into house hysterical + told her  
what happened + she called police". This worksheet, of Larry  
Lewis, Ada County Paramedics, was prepared on February  
6, 1994, from information taken from K.M., and Debbie  
Clifford, on the way to St. Alphonsus Hospital, by ambulance.  
Julianne Meehan: "Did he say anything about hurting you?  
[K.M.] No." S.C. No. 22666, in. p. 344, ls. 12-14. By Gus  
Cabill: "what happens to you in your home if you lie? [K.M.]  
Go to my room." S.C. No. 22666, in. p. 354, ls. 23-25.  
Petitioner: "Did you know that as a result of that talk with  
Margi Sykes (CARES tape) that you were on videotape,  
did you know that? [K.M.] A: No." in. p. 759, ls. 14-17.  
CARES tape: "Ms. Sykes: Where did he put that? K.M.: What?  
Ms. Sykes: Like baby oil. K.M.: on my private.... Ms. Sykes:....  
Did it just stay on there? K.M.: I kept it on .... Ms. Sykes:  
well, so you didn't wipe it off ....". in. pp. 871-72, ls. 1-4;  
21-22; 23; p. 872, ls. 4-5. Gus Cabill: "During that period of  
time, did you ever wipe yourself off with any towels?  
K.M.: No. Gus Cabill: you didn't? K.M.: well, he give  
me a rag to wipe myself off." in. p. 357, ls. 20-25.  
affidavit of Petitioner in support - 3

11. "Ms. Sykes: Was anything ever inside? [K.M.] Huh-uh," (CARES interview, 02/07/94, *Tr.* p. 866, ls. 1-3, S.C. No. 22666). "Ms. Sykes: .... when he put his weenie there, could you feel that with your body? [K.M.]: I don't remember. Ms. Sykes: .... was there any time that you ever saw that? [K.M.]: (Shaking head side to side.) Ms. Sykes: Did anything ever come out of that?" [K.M.]: Huh-uh". *Tr.* p. 874, ls. 6-15. "Ms. Sykes: Did you see any parts of his body or any part of him? [K.M.]: (Shaking head side to side)." *Tr.* p. 873, ls. 8-11. However, the following is in evidence at trial: By Ms. Meehan: ".... Did he put his weiner anywhere? [K.M.]: It felt like he was putting it in my bottom. [Ms. Meehan]: Is that where you go poop? [K.M.]: Yes. [Ms. Meehan]: Kori, how did that feel? [K.M.]: It hurt." *Tr.* pp. 347, ls. 19-25, 348, ls. 1. By Ms. Meehan: "Did you ever see anything come out of his weiner? [K.M.]: Huh-uh. [Ms. Meehan]: Is that or no? [K.M.]: No." *Tr.* p. 349, ls. 17-21. By Mr. Cahill: "Had you been to this courtroom before? [K.M.]: yes. [Mr. Cahill]: When was that? [K.M.]: When we were having a court thing for kids." *Tr.* p. 352, ls. 19-24. By Ms. Fisher in closing argument: ".... There was no semen, and Kori told you there wasn't going to be any semen. She didn't say there wouldn't be, but she said nothing came out of his penis, and there is no reason to believe that there would be semen because she said she didn't see anything come out, and there were no pubic hairs.

affidavit of Petitioner In Support - 4

That's not a red herring in this case..... There is no pubic hair. Kori told you that the defendant put baby oil all over her vagina and rectum, and then after it over with, that she used a rag to wipe off. Whatever might have been there, she used the rag, folks. When she went to the hospital, there wasn't any pubic hairs to be found....". (Tr. p. 931, ls. 17-24, p. 935, ls. 3-9.

12. By Mr. Cahill: "What areas did you swab? [Dr. Marilee Kuracina]: Well, I swabbed - she [K.M.] said that her perineum or her genital area, was licked, and so what I did was I took swabs of that area so that if there was saliva or something, that it might be picked up on the swab. I took swabs just at the - usually, just at the rectum, at the opening of the rectum. We don't ~~push~~<sup>go in</sup> necessarily push things into the rectum, or Q-tips into the rectum, but we just take swabs of the area.... (Tr. p. 412, ls. 3-12).... I did a swab of the anus". (Tr. p. 422, l. 25); By Ms. Meehan: "Kori, did he do anything with his mouth on your body? [K.M.]: He started

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1 This also includes evidence I was not allowed to present at trial in the form of exhibits and, otherwise, and evidence my attorney failed to secure at trial for reasons he is supposed to elicit at a later date. This also includes information from the appeals, both direct and collateral.

affidavit in support - 5

kissing me. Q: where did he kiss you? A: On my lips. Q: Did he put his mouth on any other part of your body besides your mouth? A: NO." (Cir. p. 349, ls. 2-9). Dr. Marilee Kuracina: I asked her if Bubba asked her to do anything else, and she said no, except that Bubba told her to kiss him on the lips." (Cir. p. 408, ls. 12-15)

12. By Ms. Meehan: "... Did you specifically ask Kori about penetration and she said? [Nurse Debi Drake]: I asked her if anything was put anywhere ~~on~~ that made her uncomfortable, and she said nothing was put in there." (Cir. p. 527, ls. 11-15). By Ms. Meehan: "Ms. Drake, when you took the anal swab on Kori because she wanted it done sooner rather than later, I take it that you ask the child so they have some kind of control over the situation? A: Yes. Q: when you took the anal swab, how did you do that? A: She laid on her side, and I spread her cheeks apart and just inserted it until the cotton was in and twisted it a half-a-turn and withdrew it. Q: and then dried it and then put it in the rape kit? A: Yes." (Cir. p. 533, ls. 2-16). "... I had to do a survey of looking for any bumps, bruises, contusions, lacerations and feeling for anything that may be hurt.... [By Mr. Cahill]: Now, Ms. Drake, in terms of your examination of this patient, you saw no external

affidavit in support - 6



signs of trauma, correct? A: correct. (Ex. p. 543, ls. 23-25; p. 547, ls. 22-25, respectively).  
PE 1 was authored by nurse Debi Drake on February 6, 1994, by Mr. Cahill: "How about the exterior of her body, did you observe any signs of ~~QSM~~ trauma? [Dr. Mainee Kuracina]: I don't recall seeing anything that showed bruising. I didn't make note of anything that looked bruised or red on my report. Q: you didn't note any of that or anything like that? A: correct. (Ex. p. 430, ls. 13-20)...  
... Q: Okay. Next, you indicated that you noted no trauma to the exterior genitalia, correct? A: correct. Q: you would have noted ~~QSM~~ that if there had been anything significant, correct? A: yes, I hope so, yes." (Ex. p. 438, ls. 8-14).

13. PE 6 reflects that K.M. told officers Stevens & Sajko, among other things, "... He made her put a pillow over head and he attempted penile/anal penetration ...", on 2/6/94 1029 HR.

14. I produce the seminal component known as, sperm, contained in my semen, which is known to be the component that combines with the egg of the human female to create life known as a baby.

affidavit in support - 7

15. a "rape kit"<sup>2</sup> was performed on 02/06/94, and samples were taken from K.M. Ann R. Bradley, Criminalist, Idaho Department of Law Enforcement, Bureau of Forensic Services, now, out of the Idaho State Police, tested samples in the sex crime kit. as is evidenced by PE 7 and 8, Ann Bradley's conclusion of her testing of the sex crime kit is: "No seminal fluid was found on the samples in the kit." However, no DNA tests were performed to my knowledge, as the DNA technology in 1994-95 was not as sophisticated, and sensitive, as it is, today, hence, unavailable.

16. as is evidenced in PE 9, pp. 7-9, I requested DNA testing of the samples of the sex crime kit in case no. SPOT9900773D, based upon Ann Bradley's testimony at trial that she made "extracts" of samples of the kit; and <sup>also</sup> found "epies", or, epithelial cells, "which is a typical skin surface cell". (C.R. p. 494, ls. 6-10. please, see also, p. 493). I requested the DNA testing in the form of a "supplemental Motion to Employ Experts". This Motion has never been ruled upon by the court and remains outstanding. However, in 1999-2000, there were no Idaho statutes which permitted the post-conviction DNA <sup>testing</sup> that is now being requested, pursuant to Idaho Code, 19-4902(b)<sup>2.5</sup>

2 also known as a "sex crime kit".

affidavit In Support - 8

17. The bottle of baby oil that was seized from my residential trailer, was combined by me with a different bottle of baby oil to make room in the small travel trailer space, prior to 02/06/94. So, I know that Frederick Whitehurst's testimony at trial was BS, and, his notes support it, as is evidenced in PE9, pp. 2-7. The bottle of baby oil seized had a lot number on it, "1402". Mr. Whitehurst testified at trial, that, not the bottle of baby oil ~~is~~ likely came from the same, 6,000 gallon batch of 1402, but the extracts he made. However, it was made to appear by the prosecution that it all likely came from the same 6,000 gallon batch of 1402.

18. In early, 1993, I attended classes to become an EMT-D, health provider C. During the course, I purchased a black case, containing a stethoscope, sphygmomanometer (blood pressure cuff), and a penlight, for \$35.00, all verifiable. On February 6, 1994, I didn't feel like cleaning my trailer before being transported to a new job site in Oregon, cleaning grease ventilation systems. I had also been cleaning local, Boise and Meridian businesses at night, such as bars and restaurants, e.g. Joe's all-american Bar & Grill.

---

2.5 I.C. section 19-4902(b), allows the request for DNA testing, "at any time", as of: 7/1/10,  
affidavit in support - 9

So, I drove over to Randy and Vanessa McNeils to see if Vanessa would clean for me while I rested. Upon arrival, I saw their diesel car out front and assumed they were home. I did not know Vanessa's work hours and I didn't know Randy had left for Alaska, yet, or, not. K.M. offered to clean, since Vanessa wasn't home and told her brother, Nate, that he couldn't go, and, he wanted to. Before we left, K.M. went next door to the custodial babysitter's house, Debbie Clifford. K.M. told me that Debbie gave permission to go with me, and, I believed her. ["Ms. Sykes: .... Did anybody know that you were gone? Kori McNeil: My brothers and my neighbor. Ms. Sykes: Your brothers and neighbor. Kori McNeil: Yeah, baby sitter. Ms. Sykes: Where did they think you were? Kori McNeil: They knew that I was over at his house cleaning." in. p. 854, ls. 24-25; p. 855, ls. 1-9. by Ms. Meehan; "and so you had not made arrangements to keep an eye on Vanessa's kids, then, prior to that? [Debbie Clifford]: Not that day, no. Q: Not formally? A: No." in. p. 278, ls. 1-6.] a little while after K.M. and I arrived at my trailer, K.M. began to complain about being ill. so, I grabbed my black, zippered case, containing my ENT instruments. I took K.M.'s blood pressure K.M. held the end of my stethoscope underneath her shirt in the front while I listened to her heart. I took my penlight and looked into her throat. It looked red and I thought I saw pustules in the back of her throat. I then

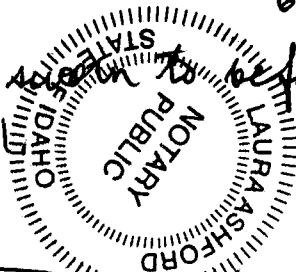
affidavit in support - 10

went to the bathroom cabinet and retrieved a thermometer, and took K.M.'s temperature - she had a high fever, over 100° F. I told her, that after I took her home, that she needed to see a doctor because she is ill. Kori then demanded her \$20 for cleaning. I told her that I would give it to her in a couple of weeks after I came back from Oregon, as we had agreed. K.M. became angry, so, I gave her a bag of small silver plates to calm her down and hold onto until I gave her the \$20. The plates were worth far more than \$20, it is seemed to appease her. She then used the bathroom and closed the door. When she came out, I took her home. When she exited the car, she ran to her trailer, which, I thought was odd, given the fact that I had her home before the time required for me to bring her home. I then went home, laid down, and went to sleep. I was then awakened by officers knocking at my door. In retrospect, it was not a good idea to take K.M., or, any child with me, even having the custodial babysitter's permission to do so. I would never ever, do something like that, again, and I have bitterly regretted it, for almost 17 years. <sup>4</sup>

Dated this 31<sup>st</sup> day of January, 2011.

Gregory J. Nelson  
Gregory J. Nelson, Affiant

Subscribed and sworn to before me on this 31 day  
of January, 2011.



Gregory J. Nelson  
Notary Public for Idaho  
Residing at: Lewiston  
My Commission Expires: July 26, 2011

<sup>4</sup> I also wrote a letter to Shirley, requesting a polygraph exam before that, my request was ignored, and/or, denied.  
Affidavit In Support - 11

**St. Alphonsus**  
Hospital Medical Center  
1055 North Curtis Road  
Boise, ID 83721  
A Member of Holy Cross Health System

**WRITTEN CONSENT**  
OF THE PATIENT

Emergency Department  
Med/Surg Flow Record

ED. NO.  
0437269

NAME MCNEIL, KORI						DATE 2-6-94																		
TIME	BP	HR	RR	SpO2	Temp	Time	IV Started By	Site R / LI / Needle	Number	Amount	Solution	Additives	Blood	Rate cc/hr.	Time	Total in	Time Out	Time	Urine	NC / emesis				
1100	108/64	100	24	101%	N/A																			
1235	108/60	108	22	99%	N/A																			

1100 exam + evidence per protocol; pt denies vaginal or anal penetration or external trauma. 1130 evidence collected per protocol. 1200 remains stable. 1205 eval by Dr. Kuracina. 1230 to PR - VA done. 1230 Detective talking to mom. 1258 disch to family.

Time: 1255		VALUABLES <input type="checkbox"/> None <input type="checkbox"/> With Patient <input type="checkbox"/> Home/Family <input type="checkbox"/> Valuables Envelope to Security	
<input checked="" type="checkbox"/> Aftercare		DESCRIPTION to Boise Police Department	
<input checked="" type="checkbox"/> Patient/significant other understanding of discharge instructions		Disposition Time: _____	
<input type="checkbox"/> Verbal <input type="checkbox"/> Return Demonstration		<input checked="" type="checkbox"/> Home 1258	
Mode: <input checked="" type="checkbox"/> Ambulatory <input type="checkbox"/> W/C		<input type="checkbox"/> Floor _____ <input type="checkbox"/> Admissions Notified	
<input type="checkbox"/> Carry <input type="checkbox"/> Stretcher		<input type="checkbox"/> Report Given / Time _____	
Condition: <input type="checkbox"/> Unchanged		NURSING SIGNATURES	
<input type="checkbox"/> Improved		D. Drake RN (d)	
Dr. Drake		Petitioner's Page 2 of 2 Exhibit 25	

EMERGENCY — OUTPATIENT RECORD

MEDICAL RECORDS

PATIENT NAME AND ADDRESS MCNEIL, KORI 1904 1/2 Kerr Boise, Id		ADM. BY GAP	PT. TYPE-CODE E	DEPT. VST. ER	CODE — CHURCH
HOW LONG / S.S. NO. / PHONE NO. 000-00-0000		BIRTH DATE 12/10/83		AGE 10Y	CODE — SEX F FEMALE
HOW BROUGHT IN / BY WHOM / RELATION AMB		CODE — E.R. PHYSICIAN 483		CODE — MARITAL STATUS U	
PARENTS W		483 KURACINA, MARILEE		IN EMERGENCY NOTIFY / PHONE 00000 999-336-9612	
GUARANTOR NAME AND ADDRESS BOISE CITY POLICE 7200 BARRISTER BOISE		HOW LONG ADDRESS / S.S. NO. / PHONE 000-00-0000		ID 83706	
REL. OF INSURED 01		EFFECTIVE DATE DOI 2/6/94		POLICY NO. 00000	
CARRIER NAME 011 GOV AGENCIES		REL. OF INSURED 01		EFFECTIVE DATE DOI 2/6/94	
PATIENT COMPLAINT 06 2/06/94 00		ICD9 / CPT CODE		MED REC #: 268419	

**TO THE PATIENT OR PERSON ACTING FOR PATIENT:** This information is important to you. It provides release of information from your records for medical and administrative purposes. It also discusses payment of your medical bills and how your valuables should be handled.

**RELEASE OF INFORMATION:** I authorize Saint Alphonsus Regional Medical Center to release to the third party payer named in my registration, or a designated review agency, any information from my medical record, including information about my treatment, which is needed for the purpose of processing my claim. I reserve the right to withdraw this authorization at any time, which can only be effective with my written consent.

**MEDICARE OR CHAMPUS ONLY:** I request payment of authorized benefits to me, or on my behalf, for any services furnished to me by or in Saint Alphonsus Regional Medical Center, including physician services. I authorize any holder of medical and other information about me to release to Medicare or Champus and its agents any information needed to determine these benefits for related services.

**ASSIGNMENT OF BENEFITS/PAYMENT AGREEMENT:** I hereby authorize payment directly to Saint Alphonsus Regional Medical Center of all insurance benefits, not to exceed charges, to which I would otherwise be entitled for these services. I understand and agree regardless of my personal ability to pay, that I am financially responsible to Saint Alphonsus Regional Medical Center for 100% of charges and that a FINANCE CHARGE computed at a periodic rate of 1½% per month, which is an annual percent rate of 18% may be applied to the "adjusted balance" of my account.

**PERSONAL VALUABLES:** It is understood and agreed that Saint Alphonsus Regional Medical Center maintains a safe for the safekeeping of money and valuables, and that Saint Alphonsus Regional Medical Center shall not be liable for the loss of or damage to any money, jewelry, documents, fur garments, or other articles of unusual value unless placed therein, and shall not be liable for the loss of or damage to any other personal property unless deposited with Saint Alphonsus Regional Medical Center for safekeeping.

PATIENT OR REPRESENTATIVE SIGNATURE Vanessa McNeil			
DATE	TIME	A.M. P.M.	IF REPRESENTATIVE, INDICATE RELATIONSHIP
WITNESS SIGNATURE [Signature]			DATE

COMMENT LINE:

000026

First Health alb  
518-72-1595

## 1. Examiner

Gabica Eberharder CornwallHenbest PNPChild's Name Kari McNeil 3. Registration # \_\_\_\_\_4. Date of Birth 11-13-83 5. Age 106. Date of Exam 2-7-947. Person(s) Accompanying Child Vanessa McNeil

7.1 Relationship to Child

LM Mom SM (Stepmom) Other  
Dad SD (Stepdad) Foster parent

8. Anybody else in the Exam room

8.1 Mom SM (Stepmom) Other  
Dad SD (Stepdad) Nurse no one

## GENERAL

9. Clothing \_\_\_\_\_

10. Hair Color

10.1 Black Brown Grey  
Red Bld (Blond)

11. Eye Color

11.1 Brown Blue Grn (Green)  
Hazel Gry (Grey)12. Child's Demeanor Antagonistic 1 2 3 4 5 6 7 Cooperative13. Parent's Demeanor 1 2 3 4 5 6 714. Speech Appropriate for Age? Yes No15. Percent of Time Speech Understandable? 100 %

16. Hygiene Status (C=Child Cleans, A=Adult Cleans)

16.1 Clean/Neat Worms Other  
Unkept Rash  
Lice Impetigo

## 17. HISTORY OF MENTAL ILLNESS IN THE CHILD

17.1 Diagnosis Yes No

17.2 Type \_\_\_\_\_

17.3 Treatment Yes No

17.4 Type \_\_\_\_\_

17.5 Treatment by Whom \_\_\_\_\_

## 18. MEDICATIONS ( Check as many as apply)

18.1 Analgesic 18.2 Antibiotic 18.3 Anticonvulsant  
18.4 Antidepressant 18.5 Anti-diarrheal 18.6 Anti-inflammatory  
18.7 Asthma 18.8 Cold prep. 18.9 Contraceptive  
18.10 Diabetic agent 18.11 Hormones 18.12 Laxative  
18.13 Vaginal prep. 18.14 Vitamins 18.15 OtherEE5 400 mg qid x109. Allergies Y N

0. Type \_\_\_\_\_

. Immunizations Current Y N

Exhibit 3

EX-000027



23.1	Height	62"			
23.2	Weight	60#			
23.3	Nutritional Status		✓		
23.4	Head		✓		
23.5	Eyes		✓		
23.6	Ears		✓		
23.7	Nose		✓		
23.8	Throat			✓	
23.9	Dental Care		✓		
23.10	Chest		✓		
23.11	Abdomen		✓		
23.12	Extremities		✓		
23.13	Neurologic		✓		
23.14	Skin				
23.15	Any Other Comments				

birth

4. TANNER STAGES

Male

Female

4.M Stages: 1 2 3 4 5 24.F 1 2 3 4 5

INDINGS

25. MALE

WNI

APN

Comments

5.1	Perineum			
5.2	Penis			
5.3	Scrotum			
5.4	Inner Thigh			
5.5	Urethra			

6. MALE/FEMALE ANAL

Code Each Finding Below With The Examination Position/s:  
PKC=prone knee chest, Lateral, PKC=supine knee chest, Other

		WNI	APN	Comments
6.1	Perianal Skin		✓	erythema, abrasion
6.2	Orifice		✓	irregular
6.3	Anal Verge	✓		asymmetry
6.4	Folds/Rugae		✓	
6.5	Dilation	mm after	minutes	
		complete	incomplete	
6.6	Anal Laxity		✓	
6.7	Stool in Rectal Ampula	✓ N	Y	
6.8	History of Constipation	✓ N	Y	
6.9	History of Diarrhea	✓ N	Y	
6.10	Other			

Position(s): FL=frog leg L=lithotomy, KC=knee ch  
O=other (describe)

	<u>WNL</u>	<u>ABN</u>	<u>Comments</u>
27.1 Inner Thigh	<input checked="" type="checkbox"/>		
27.2 Mons Pubis	<input checked="" type="checkbox"/>		
27.3 Perineum	<input checked="" type="checkbox"/>		
27.4 Labia Majora	<input checked="" type="checkbox"/>		
27.5 Clitoris	<input checked="" type="checkbox"/>		
27.6 Labia Minora	<input checked="" type="checkbox"/>		
27.7 Periurethral Tissue/			
27.8 Urethral Meatus	<input checked="" type="checkbox"/>		"Hurt to pee" afterwards
27.9 Perihymenal Tissue	<input checked="" type="checkbox"/>		
27.10 Hymen			

27.10a. Shape: ☒ Crescentic ☐ Annular ☐ Septate  
☐ Imperforate ☐ Microperforate ☐ Unable to classify

27.10b. Color: ☒ Pl(pale) ☐ Erythema ☐ Pk(pink)  
☐ Eccymosis ☐ Hematoma

27.10c. Appearance: Location (per clock) Comments

<input type="checkbox"/> Thickened		
<input type="checkbox"/> Estrogenized		
<input type="checkbox"/> Fimbriated		
<input type="checkbox"/> Pl(rolled)		
<input checked="" type="checkbox"/> Rg(regular)		
<input type="checkbox"/> Irregular		
<input type="checkbox"/> Rd(redundant)		
<input checked="" type="checkbox"/> Velamentous		
<input type="checkbox"/> Attenuated		

27.10d. Defects: Location (per clock) Comments

<input type="checkbox"/> Bump(s)		
<input type="checkbox"/> Notch(s)		
<input type="checkbox"/> Transections		
<input type="checkbox"/> Remnant		
<input type="checkbox"/> Synechiae	/none	
<input type="checkbox"/> Scars		
<input type="checkbox"/> Mounds		

27.10e. Volume: Location (per clock) Comments

<input checked="" type="checkbox"/> Adequate		
<input type="checkbox"/> Decreased		
<input type="checkbox"/> Absent		

27.10f. Hymen Measurement  
mm Horizontal mm Vertical  
(Record Position)

27.11 Vagina Comments

<input type="checkbox"/> Discharge	none	
<input type="checkbox"/> Tissue		
<input type="checkbox"/> Ridges		
<input type="checkbox"/> Foreign Bodies		

	<u>WNL</u>	<u>ABN</u>	
27.12 Posteriour	<input checked="" type="checkbox"/>		
Fourchette	<input checked="" type="checkbox"/>		
27.13 Fossa Navicularis	<input checked="" type="checkbox"/>		
27.14 Other			

- A. Normal  
 B. Medical Condition  
 C. Accidental Trauma  
 D. Findings Sometimes Seen With Sexual Abuse, But Could Be From Other Causes  
 E. Consistent With Sexual Abuse  
 F. Findings Diagnostic/Specific

## 28. LABORATORY

Screens	Yes	No	N/A	Comments
28.1 Serology (St Lukes Lab)				obtained @ St. Als.
28.2 Syphilis				
28.3 STD Culture (1=GC, 2=Chlamydia, 3=Gardnerella, 4=HPV, 5=Other-Identify)				
28.3a Oral				
28.3b Vaginal				
28.3c Rectal				
28.3d Penile				
28.4 Pregnancy Test (St Lukes Lab)				
28.5 UA Obtained (St Lukes Lab)				
28.6 HIV Tested (St Lukes Lab)				
28.8 Wet Mount For Sperm				

29. Discharge Summary Given Out? ( ☒ ) Yes ( ) No  
 30. Follow-up Arranged? ( ) Yes ( ) No  
 31. Child Released To: \_\_\_\_\_

*Plu @ Cases for cultures in 3-4 wks.*

*Margaret Harkest PNP*  
 Signature of Examiner

Date

ST. LUKE'S REGIONAL MEDICAL CENTER  
Division of Community Center  
CARES Program

Petitioner's  
Exhibit 4 gm

NAME: Kori McNeil  
DOB: [REDACTED]  
EXAMINER: Margaret Henbest, P.N.P.

DATE OF EXAMINATION: February 7, 1994

CARES HISTORY: Kori McNeil is a 10 year old female Caucasian child who is accompanied to the CARES Program today by her mother, Vanessa McNeil. According to her mother and to emergency room records from St. Alphonsus Regional Medical Center, Kori was seen in the emergency room yesterday for allegations of acute sexual assault. According to her mother, there was no bleeding and no complaints of pain by Kori at the time of the disclosure. There have been no past allegations of child sexual abuse involving Kori. There have been no perineal or rectal accidents and there is no history of constipation or diarrhea. Suppositories or enemas have not been used. Kori is here for a CARES examination as well as an interview.

PAST MEDICAL HISTORY: According to her mother, Kori was the product of a full term pregnancy, normal vaginal delivery. She went home from the hospital with her mother. Her mother describes her as a "healthy child". She has had no other hospitalizations or previous emergency room visits. She is currently on Erythromycin 400mg q.i.d. x 10 days for Strep Throat which was diagnosed in the Emergency Room yesterday. She is on no other medications. SHE HAS NO KNOWN ALLERGIES. Her immunizations are up to date. She attends the 4th grade at Whitney School where she is doing well and there are no problems. Currently Kori is complaining that her back hurts and tenderness at the site where she had blood drawn yesterday.

PHYSICAL EXAMINATION: Kori McNeil is an attractive 10 year old female Caucasian child. She is clean and well dressed in navy blue T-shirt and leggings. Her speech is clear and understandable 100% of the time. The content of her speech is age appropriate. She is accompanied by no one else in the examination room. Kori is quite embarrassed about the examination and this is offered as a way to make it more private. Kori is in agreement to this. She has brown hair and brown eyes. Kori acknowledges that she is uncomfortable with the examination and does not want it to happen. Efforts are made to make her feel comfortable in the examination setting and the examination is then begun. HEENT: The head is symmetric. The hair distribution is normal. There is no tenderness over the scalp. The hair shafts are normal. The pupils are equal and reactive to light. The eyes are normally set. The extra ocular movements are full and the funduscopic examination is normal. The ears are also normally set. The pinna are not malformed. The tympanic membranes are pearly gray, have a brisk light reflex and distinct landmarks. There are submandibular nodes on the left which Kori denies as being tender. Thyroid is midline and not enlarged. Breasts are Tanner Stage 1. Heart tones are normal. There is no audible murmur. Breath sounds are clear. There are two erythematous approximately 1cm lesions noted over the left scapula posteriorly. Kori does not know where these come from. There are no other significant lesions noted. EXTREMITIES: The extremities are symmetrical

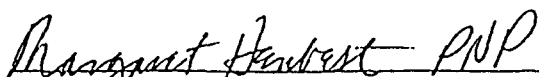
00261  
ATTACHEMENT "G"  
000031

without deformity. The abdomen is soft flat. Bowel tones are active. There are no masses or tenderness. NEUROLOGIC: Deep tendon reflexes are +2, symmetrical and quite brisk. Gait is normal. Speech is also normal. GENITALIA: In the lithotomy position the genitalia are noted to be Tanner Stage 1. The inner thighs and mons pubis are without lesions, abrasions, chaffing or scarring. There are no bruises noted. The mons pubis is normal. Perineum is without any rashes or lesions. The labia majora is normal. The clitoris and clitoral hood are normal. The labia minora is normal. The periurethral tissue is not erythematous. There is no urethral-meatal dilatation. There is no urethral discharge. Perihymenal tissue is normal. The hymen is crescentic in shape and pale. The hymenal tissue is regular and quite velamentous. There are no hymenal defects noted. The hymenal tissue volume overall is adequate. When placed in the knee chest position, this is confirmed. There is no vaginal discharge. There are no ridges visible. The posterior fourchette is without lesions or abrasions and the fossa navicularis is also normal. The posterior fourchette is not friable. In the supine knee chest position, the anus is irregularly ovoid in shape. The rugae have an abnormal contour and are asymmetrical. Dilatation is fairly prompt. Kori attempts to constrict her anus and is not able to do this consistently. She is advised to relax this muscle and it appears that full relaxation also yields an irregular contour to the anal opening. The mucosa is pink. There is a symmetrical erythema of the perianal skin which is consistent with the skin folds. There are two small abrasions noted at the 12 o'clock position prone when Kori is placed in the prone knee chest position. These are midline in the perianal region. The rectal mucosa seems boggy and swollen. Kori is asked if she can tell me where, as well as, point to where she was touched. At this point she sits up and she points to her rectal area. She is asked if this is where he touched her and she says "yes". I then moved my hands to the area of her labia, and while pointing and touching this area, asked if he had touched her here and she shakes her head "no". It is asked if anything came out of his penis and she states "no". It is asked if anything was put on her and Kori states that at the beginning of this he put baby oil all over her including the rectal area. No cultures are obtained at this time. Follow-up cultures through the CARES Program will be obtained in 3 to 4 weeks.

CLOSURE: Closure is carried out with Kori congratulating her on her cooperation. Further closure is carried out with her mother concerning the impression of the examination and the need to provide therapy and followup medical care.

IMPRESSION: 1. The genitalia finding of a smooth, delicate, velamentous hymen which is without defects and is adequate in volume is a normal examination finding. The rectal examination finding of swelling, asymmetry of the folds and irregularity of the anal opening is consistent with acute blunt force trauma to the anal orifice. The abrasion perianally is also consistent with friction trauma to this area. The erythema of the perianal skin may be related to sexual abuse however, it also may be related to perianal hygiene. 2. Strep throat currently being treated.

RECOMMENDATIONS: 1. Therapy with a therapist who is experienced in child sexual abuse. This has already been discussed with Mrs. McNeil. 2. Continued EES 400 mg q.i.d. x 10 days. 3. Follow-up STD cultures at CARE in 3 to 4 weeks.

  
Margaret Henbest, P.N.P.

00262  
000632

Pg. 1 of 2

Run No.

Date

Age

PE 5

Name

ADA COUNTY PARAMEDICS

2-6-94 10 McNeil, Kori

## VITAL SIGNS

Times	1046				
B.P.	Systolic	not			
	Diastolic	taken			
Pulse	Rate	110			
	Quality	reg.			
Resp.	Rate	20			
	Quality	unlabored			

Current Medications:

Allergies:

## GLASCOW COMA SCALE

	Time	1041			
EYES OPEN	Spontaneously	4	X		
	To speech	3			
	To pain	2			
	None	1			
BEST VERBAL RESPONSE	Oriented	5	X		
	Confused	4			
	Inappropriate	3			
	Incomprehensible	2			
	None	1			
BEST MOTOR RESPONSE	Obeys Commands	6	X		
	Localizes Pain	5			
	Withdraws	4			
	Flexion to pain	3			
	Extension to pain	2			
	None	1			

Time	Treatment / Medications	Description / Disposition
1040	⑤	Dispatched to pos. Sexual Assault 10yo. ♀ C/L Vaginal pain. Pt. stated she went over to Suspect's house to help him clean the house. Pt. stated she cleaned for awhile the suspect then tried to make her take her clothes off, pt. resisted. Suspect then tried to put pillow over pt's face & threatened her life. Pt. stated suspect then tried to take pt's pants off & got them partially off & tried to force her to have sex w him. Pt. hesitant to elaborate any more information. Pt. denied head, neck, or back pain, denied Chest or Abdominal pain. Pt. also denied any pain in extremities. No Pertinent PMHx. U/KN is any PMH. Pt's friend advised pt. came into house hysterical & told her what happened & she called police. ① Pt. Alert & Oriented x3, skin warm, dry, pink. Upon our arrival pt. crying. Pt. upon exam had small abrasion just lateral to eye, which pt. stated was there prior to incident. Pt. appeared visibly shaken. Pt. hesitant to be examined any further, therefore No further exam performed. Pt. was able to ambulate. No BIP taken. Pulse 110 strong & reg. Respirations 20 unlabored.
ATTACHEMENT "H"		

Impression

Pos. Sexual Assault

Signature

Larry [Signature] EMT

00253  
000033

Name

ADA COUNTY PARAMEDIC

2-6-94 10 M<sup>c</sup>Neil, Kori

[illegible]

## Impression

Pos. Sexual Assault

Signature

00264  
090034  
e Larry Lewis ENTZ

00264

000034

# GENERAL REPORT

ADA COUNTY SHERIFF'S DEPARTMENT

BOISE POLICE DEPARTMENT

1. R.D. 27	2. D.R. No. 403-697
---------------	------------------------

3. Offense or Charge (include Degree) LEWD CONDUCT-MINOR CHILD	4. Law Section No. 18-1508	5. Custodial Hold <input type="checkbox"/> Felony <input checked="" type="checkbox"/> Altercation <input type="checkbox"/> Misdemeanor <input type="checkbox"/>
6. Date & Time Occurred 2/6/94 BETWEEN 0800/1020 HRS	7. Date & Time Reported 2/6/94 1029 HR	8. Location of Occurrence 3600 AMERICANA #13, BOISE

VICTIM	9. Victim Name - Last, First, Middle (Firm if Business) MCNEIL, KORI A	10. Residence Address 1904 1/2 KERR, BOISE	11. Res. Phone —
	12. Occupation STUDENT GRADE 4	13. Race W	14. Sex F
	15. Age 11	16. Business Address/School WHITNEY ELEMENTARY	18. Bus. Phone 338-3545
	19. Victim Vehicle Year —	20. Make —	21. Model —

CODES: V = VICTIM W = WITNESS RP = REPORTING PARTY PG = PARENT/GUARDIAN

OTHERS INVOLVED	26. Code W	27. Name - Last, First, Middle (Firm if Business) POGUE, D	28. Residence Address BOISE PD	29. Res. Phone —
	30. Occupation POLICE OFFICER	31. Race W	32. Sex M	33. Age —
	34. D.O.B. —	35. Business or Employer Address/School BOISE PD	36. Bus. Phone —	37. Code W
	38. Name - Last, First, Middle (Firm if Business) MCDOWELL, JUDIA B.	39. Residence Address 2002 TENDRY, BOISE 83705	40. Res. Phone 336-7612	

SUSPECTS	59. Suspect No. 1 (Last, First, Middle) NELSON, GREGORY J	60. Nickname/AKA —	61. Race W	62. Sex M	63. Age 30	64. D.O.B. 3/7/63	65. Ht. 6'5"	66. Wt. 260	67. Bld. —	68. Hair BRN	69. Eyes BLU
	70. Suspect's Address 3600 AMERICANA #13 BOISE	71. Clothing Description —	72. Cited <input type="checkbox"/> Arrested <input checked="" type="checkbox"/>	73. Summons No. —	74. Suspect No. 2 (Last, First, Middle) —	75. Nickname/AKA —	76. Race —	77. Sex —	78. Age —	79. D.O.B. —	80. Ht. —

89. HAIR LGTH/TYPE	90. HAIR STYLE	91. FACIAL HAIR	92. COMPLEXION	93. GEN. APPEARANCE	94. Demeanor	95. SPEECH	96. WEAPON
1 2 SUSPECT	1 2 SUSPECT	1 2 SUSPECT	1 2 SUSPECT	1 2 SUSPECT	1 2 SUSPECT	1 2 SUSPECT	1 2 SUSPECT
<input type="checkbox"/> Unknown	<input type="checkbox"/> Unknown	<input type="checkbox"/> Unknown	<input type="checkbox"/> Unknown	<input type="checkbox"/> Unknown	<input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Unknown	<input type="checkbox"/> Unknown
<input type="checkbox"/> Bald	<input type="checkbox"/> Afro/Nat	<input type="checkbox"/> Clean Shave	<input type="checkbox"/> Acne	<input type="checkbox"/> Conservative	<input type="checkbox"/> Angry	<input type="checkbox"/> Accent	<input type="checkbox"/> Handgun
<input checked="" type="checkbox"/> Collar	<input type="checkbox"/> Braided	<input type="checkbox"/> Full Beard	<input type="checkbox"/> Dark	<input type="checkbox"/> Dirty	<input type="checkbox"/> Apologetic	<input type="checkbox"/> Lips	<input type="checkbox"/> Shotgun
<input type="checkbox"/> Long	<input type="checkbox"/> Bushy	<input type="checkbox"/> Fu Manchu	<input type="checkbox"/> Freckled	<input type="checkbox"/> Disguise	<input type="checkbox"/> Calm	<input type="checkbox"/> Mumbles	<input type="checkbox"/> Rifle
<input type="checkbox"/> Shoulder	<input checked="" type="checkbox"/> Greasy	<input type="checkbox"/> Goutee	<input type="checkbox"/> Light	<input type="checkbox"/> Flashy	<input type="checkbox"/> Disorganized	<input type="checkbox"/> Offensive	<input type="checkbox"/> Sim. Gun
<input type="checkbox"/> Short	<input type="checkbox"/> Military	<input type="checkbox"/> Lower Lip	<input type="checkbox"/> Medium	<input type="checkbox"/> Good Looking	<input type="checkbox"/> Irrational	<input type="checkbox"/> Quiet	<input type="checkbox"/> Toy Gun
<input type="checkbox"/> Coarse	<input type="checkbox"/> Ponytail	<input type="checkbox"/> Mustache	<input type="checkbox"/> Pale	<input type="checkbox"/> Military	<input type="checkbox"/> Nervous	<input type="checkbox"/> Rapid	<input type="checkbox"/> Knife
<input type="checkbox"/> Fine	<input type="checkbox"/> Processed	<input type="checkbox"/> None/Fuzz	<input type="checkbox"/> Pocked	<input type="checkbox"/> Unkempt	<input type="checkbox"/> Polite	<input type="checkbox"/> Slow	<input type="checkbox"/> Oth. Cut. Ins.
<input type="checkbox"/> Thick	<input type="checkbox"/> Straight	<input type="checkbox"/> Sideburns	<input type="checkbox"/> Ruddy	<input type="checkbox"/> Unusual Odor	<input type="checkbox"/> Professional	<input type="checkbox"/> Stutters	<input type="checkbox"/> Hands/Feet
<input type="checkbox"/> Thinning	<input type="checkbox"/> Wavy/Curly	<input type="checkbox"/> Unshaven	<input type="checkbox"/> Tanned	<input type="checkbox"/> Well Groomed	<input type="checkbox"/> Stupor	<input type="checkbox"/> Talkative	<input type="checkbox"/> Club
<input type="checkbox"/> Wiry	<input type="checkbox"/> Wig	<input type="checkbox"/> Van Dyke	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Casual	<input type="checkbox"/> Violent	<input type="checkbox"/> Non English	<input type="checkbox"/> Auto
<input type="checkbox"/> Other	<input type="checkbox"/> Corn Rows	<input type="checkbox"/> Other		<input type="checkbox"/> Other	<input type="checkbox"/> Normal	<input type="checkbox"/> Speaking	<input checked="" type="checkbox"/> None

97. Further Suspect Description (i.e. Glasses, Tattoos, Teeth, Birthmarks, Jewelry, Scars, Mannerisms, Weapons, Etc.) SSN # [REDACTED]	98. Additional Suspects Listed Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
-------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------

99. Suspect Vehicle Year —	100. Make —	101. Model —	102. Body Style —	103. Color/Color —	104. License No. —	105. State —
-------------------------------	----------------	-----------------	----------------------	-----------------------	-----------------------	-----------------

106. Additional Vehicle Identifiers (Damage, Chrome Wheels, Vin, Etc.) —	107. Probable Cause (Two or Three Sentences Briefly Outlining What Occurred and Establishing the Elements) NELSON PICKED UP MCNEIL AT 1904 1/2 KERR AND TOOK HER TO 3600 AMERICANA #13. HE ORDERED MCNEIL, A 10 YR OLD FEMALE, TO TAKE HER CLOTHES OFF IN HER TRAILER OR HE WOULD KILL HER. HE MADE HER PUT A PILLOW OVER HER HEAD AND HE ATTEMPTED PENILE/ANAL PENETRATION. HE TOOK HER BACK TO 1904 KERR.
-----------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

108. Describe Property Stolen —	109. Removed From —	110. Property Identification Information —	111. Property Value —
------------------------------------	------------------------	-----------------------------------------------	--------------------------

DISTRIBUTION: Original - Records Yellow - Follow-up Pink - Crime Analysis

114. Supervisor Review File <input type="checkbox"/> Crime Prevention <input checked="" type="checkbox"/> Patrol F/U <input checked="" type="checkbox"/> Invest. F/U <input type="checkbox"/>	115. Sup. Approval [Signature]	116. Phone Rpt. <input type="checkbox"/> Counter Rpt. <input type="checkbox"/> Ins. Rpt. <input type="checkbox"/>	117. Copies To: FLATEW	118. Copies For: <input type="checkbox"/> Crime Analysis <input checked="" type="checkbox"/> City Pros. <input checked="" type="checkbox"/> County Pros. <input checked="" type="checkbox"/> Crime Prevention <input checked="" type="checkbox"/> Patrol <input checked="" type="checkbox"/> Invest. <input checked="" type="checkbox"/>
119. Officer(s) Reporting STEVENS / CSAJTO	Ada No. 444/4541	120. Reporting Person's Signature —	112. Property Damage —	113. Total Loss —

Relator's Exhibit 6



A F F I D A V I T

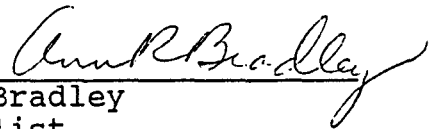
LAB NO.: 26470  
AGENCY CASE NO.: 403-697/403-701  
AGENCY: Boise Police Department  
SUSPECT: Nelson, Greg  
VICTIM: McNeil, Kori

STATE OF IDAHO)  
                  ) ss.  
COUNTY OF ADA )

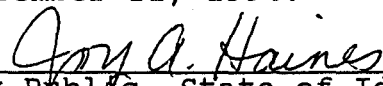
Ann R. Bradley, being first duly sworn, deposes and says the following:

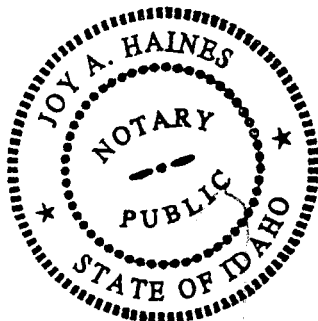
1. That I am a criminalist with the Idaho Bureau of Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That the Idaho Bureau of Forensic Services is part of the Idaho Department of Law Enforcement;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with the Bureau of Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

Dated: September 21, 1994

  
Ann R. Bradley  
Criminalist

SUBSCRIBED AND SWORN to before me on September 21, 1994.

  
Notary Public, State of Idaho  
Commission Expires: May 20, 2000



Petitioner's  
Exhibit 7

 000036

# DEPARTMENT OF LAW ENFORCEMENT

## BUREAU OF FORENSIC SERVICES

Headquarters Laboratory

P.O. Box 700

Meridian, Idaho 83680-0700

Telephone: (208) 884-7170

Fax: (208) 884-7197

LAB NO.:	26470
AGENCY CASE NO.:	403-697/403-701
AGENCY REQUESTING ANALYSIS:	Boise Police Department
RECEIVED FROM:	Robert Flaten
AGENCY RECEIVED FROM:	Boise Police Department
DATE RECEIVED:	02-10-94
RECEIVED BY:	Diane Fisher
SUSPECT:	Nelson, Greg
VICTIM:	McNeil, Kori
OFFENSE DATE:	02-06-94

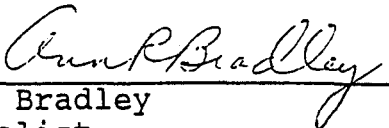
### EVIDENCE DESCRIPTION

Sex crime kit on Kori McNeil.

### CONCLUSION

No seminal fluid was found on the samples in the kit.

DATE: September 21, 1994

  
Ann R. Bradley  
Criminalist

Petitioner's  
Exhibit 8

000037

Gregory Joseph Nelson  
2601, ISC1, Unit #14  
P.O. Box 14  
Boise, Idaho 83707-0014

Pro Se Petitioner

In the District Court of the Fourth Judicial District  
of the State of Idaho, in and for the County of Ada

Gregory Joseph Nelson,  
Petitioner,

vs.

State of Idaho,  
Respondent.

Case No. SPOT9900773D  
Supplemental Motion  
To Employ Experts

NOW COMES the Petitioner, and hereby moves this Honorable Court for an appropriate Order permitting the employment of certain experts in the particular field, to evaluate, examine, perform analysis and submit reports to Petitioner on said examinations, evaluations, and analysis of certain items of evidentiary value as set forth below.

This motion supplements Petitioner's Motion to Employ Experts, dated the 18<sup>th</sup> day of December, 2001.

 **COPY**

Supplemental Motion To Employ Experts - 1

Petitioner's  
Exhibit 9  
000038

## Hydrocarbon Oil

Petitioner requests an expert to test certain items for "baby oil", the same items that former Special Agent Frederick Whitehurst tested at the FBI Laboratory, located at Washington, D.C. Frederick Whitehurst was quoted as saying that there was a "culture" of pro-prosecution bias at the lab, and that examiners were sometimes pressured into rewriting their reports to fit the prosecution's theory of the case... one guy told me, 'You either rewrite your report or we'll get a bright college student in here to replace you.'" (Petitioner's Exhibit A-2, attached to Affidavit of Gregory Joseph Nelson in Support of Application for Post-Conviction Relief, dated the 17<sup>th</sup> day December, 1999). The prosecution's theory of the criminal case below, was that "baby oil" was used on Kori McNeil during the incident of February 6, 1994.

Supplemental Motion To Employ Experts-2

In Mr. Whitehurst's notes, Ex. 36 to the instant motion, it indicates that Q-1, Q-2, ~~through~~ Q-4, Q-5, Q-7 and Q-9 were "extracted with hexane, the hexane evaporated and rediluted and analyzed with hi-temp GC. Initial analyses were not successful in detecting mineral oil, however samples were redried/evaporated/concentrated." (Id. at p. 6.) The notes then indicate that ~~hydrocarbon~~ hydrocarbon oil and other minor components were found in Q-1. Q-1: "Kori McNeil underpants 2-6-94 by Deb Drake RN..."; Q-2: "Item #8, Bottle of Baby Oil, Triple wrapped because of leak...."; Q-4: "Wiped external genitalia with tissue"; Q-5: "External Genitalia 26470 B<sup>m</sup> B"; Q-7: "A white paper box marked 'VAG. ✓ ANAL — ORAL — 26470 B' ~~in~~ containing cotton swabs"; Q-9: "A white paper box marked 'VAG. — ANAL ✓ ORAL — 26470 B' containing cotton swabs." A Monica Knuckles assisted Whitehurst. It should also be noted that Ann Bradley also made extracts of portions of the so-called "rape kit".

Supplemental Motion To Employ Experts - 3

In a letter received by Petitioner, from August Cahill, trial attorney, dated May 19, 1994, also Ex. 35 to the instant motion, Mr. Cahill indicated in that letter that the "baby oil" analysis by the FBI "seems like BS": "The FBI analysis of the baby oil is something new to me which appears to be a major problem for us. I am trying to check it out as it seems like BS. This may require a delay of the trial if needed to get this challenged." Delays of the trial occurred but the oil was never tested by a defense ~~ex~~ expert. The FBI analysis of the "baby oil" appeared to Mr. Cahill to be "BS", yet it was never challenged, as indicated.

As set forth above, item Q-2 (a bottle of "baby oil") was tested by Whitehurst with a high temperature gas chromatograph. The initial analyses were not successful in detecting mineral oil?!? The Q-2 sample was then "redried/evaporated/concentrated,"

Supplemental Motion To Employ Experts - 4

and then "hydrocarbon oil and other minor components" were found in Q-2 (the "baby oil"). This appears to be an incompetent analysis and is highly suspect. It should be noted that the Ex. 36 notes were not provided to the defense by the prosecution until the day Whitehurst was to testify. This Petitioner was not provided with a continuance or adequate time to examine these notes for trial and to prepare a defense. Thus, the contents of the notes, the comparison of the notes with the reports (attached) were not discovered until after the criminal trial.

Moreover, the notes provided to this Petitioner (Ex. 36, the Whitehurst notes) are inconsistent with Whitehurst's reports submitted to Ann Bradley, Principle Criminalist, Idaho Department of Law Enforcement, and Julianne Meehan, Deputy Ada County Prosecutor, in relation to the specimens Q-1, Q-2

Supplemental Motion To Employ Experts - 5

and Q-9. For example, whitehurst's typed reports (attached) indicate that "[p]reliminary data (May 9, 1994 report) from the analysis of specimens Q1 and Q9 is consistent with the presence of the mineral oil identified in specimen Q2." The typed report dated June 27, 1994 indicates that "there is a high likelihood that mineral oil identified in specimens Q1, Q2, and Q9 originated from the same source, that being mineral oil in lot 1402 manufactured by Vison Laboratories Incorporated on May 19, 1992." whitehurst's hand-written notes nowhere indicate that there was a consistency between Q2, Q1 and Q9, nor does it indicate that specimens Q1, Q2 and Q9 originated from the same source, lot number 1402. However, whitehurst's hand-written notes relating to K-1, Carmex medicine, K-2, Vicks Vaporub, and K-3, Blue Star Ointment, is completely consistent with his August 31, 1994 typed report.

Supplemental Motion To Employ Experts - 6



This typed report indicates that K-1 through K-3 did not originate from the same source as the Vison oil. The hand-written notes indicate the same thing.

Also attached is a letter from Ann Bradley to Whitehurst. This letter indicates that it may be important to show what medications, salves, and other products could have been present on Kori McNeil or her clothes. It also indicates that "a collection of lubricant items to be tested" is going to be submitted, i.e. K-1 - K-3.

### DNA

Petitioner is also requesting that certain items and Kori McNeil's mouth tissue be tested for deoxyribonucleic acid (DNA) and when those DNA prints are obtained, they be compared with the known DNA of Gregory Joseph Nelson.

Supplemental Motion To Employ Experts - 2

Ann Bradley testified at trial that during her microscopic analysis of certain items of the sexual assault kit she found "epies" or epithelial cells. (Tr. pp. 493, 1s. 18, 19 and 494 1s. 4-13). According to Ann Bradley an epithelial cell is a "typical skin surface cell." (Tr. p. 494, 1s. 7, 8), "Not just the outer surface of your body, but the surface of membranes, for instance, have epithelial cells on them". (Tr. p. 494, 1s. 8-10). The prosecution's charging information of the case was that this Petitioner's penis contacted Kori McNeil's anal or genital area. If that were so, Petitioner's DNA should be present on the samples. During Kori McNeil's CARES interview, she admitted, more than once, that she did not see Petitioner's penis. The indication at trial differs.

From what this Petitioner understands, the current state of DNA technology is very sensitive and accurate. Microscopic samples ("epies" for example) can be replicated (or bred), harvested, and DNA typed. Therefore, items from the sexual assault kit are therefore requested

Supplemental Motion To Employ Experts- 8

to be tested for Petitioner's DNA.

Kori McNeil testified that Petitioner "kissed" her on the "lips". (Tr. p. 349, ls. 4-6). Should this be true, Petitioner's DNA should still be present in Kori McNeil's ~~in~~ mouth. From what Petitioner understands the DNA from kissing can be detected for up to 20 years. Therefore, ~~therefore~~ it is requested that Kori McNeil's mouth be tested for Petitioner's DNA.

Wherefore, this Court should find good cause to grant the instant motion and issue an appropriate order. Petitioner cites the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Sections 3, 7, 18 to the Idaho Constitution and Ake v. Oklahoma, 470 U.S. 68, 105 S. Ct. 1087 (1985).

Should this Court grant the instant motion, Petitioner will submit the names of the appropriate experts to the Court for its consideration. Oral argument is requested.

Respectfully submitted on this 20<sup>th</sup> day of January, 2002.  
Gregory J. Nelson  
Gregory J. Nelson, Petitioner

Supplemental Motion To Employ Experts - 9

## Certificate of Service

I hereby certify that on this 22nd day of January, 2002, I caused to be served/filed true and correct copies/original of the above and foregoing Supplemental Motion To Employ Experts, by placing the same, in envelopes, wrapping paper or containers, U.S. Mail, first class postage prepaid, via the ISCI prison legal mail system and addressed to each of the following:

Julianne Meehan

Jean Fisher

Deputy Ada County Prosecutors  
602 W. Idaho  
Boise, ID 83702 (one copy)

J. David Navarro

Clerk of the District Court  
Ada County Courthouse, Room 103  
514 West Jefferson  
Boise, Idaho 83702-5959

Gregory J. Nelson

Gregory J. Nelson

Supplemental Motion To Employ Experts - 10

FEB 03 2011

CHRISTOPHER D. RICH, Clerk  
By NATALIE FARACA  
DEPUTY

198  
Gregory J. Nelson  
26201 ICI-O  
381 W. Hospital Drive  
Coeur d'Alene, Idaho 83544

Pro Se Petitioner

CV PC 1102496

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and for the County of Ada

Gregory Joseph Nelson,  
Petitioner

VS.

State of Idaho,  
Respondent.

Case No. FE-0000-21080

Brief In Support of  
Petition for the Performance of  
Forensic Deoxyribonucleic acid  
(DNA) Testing - I.C. Section 19-4902(b)

Now Comes the Petitioner, Gregory J. Nelson, and hereby  
files this Brief In Support of Petition for the Performance  
of Forensic Deoxyribonucleic acid (DNA) Testing,  
pursuant to Idaho Code section 19-4902(b), to assist  
this Court in determining the facial sufficiency  
of the Petition for DNA Testing. Said Petition for the  
Performance of Forensic Deoxyribonucleic acid (DNA)  
Testing - I.C. Section 19-4902(b), is filed  
contemporaneously herewith.

This Brief is further supported by the Affidavit of  
Gregory Joseph Nelson In Support of Petition for the  
Performance of Forensic Deoxyribonucleic acid (DNA)  
Testing - I.C. Section 19-4902(b). Said Affidavit is  
filed contemporaneously herewith.

Brief In Support - 1

### Introduction

Petitioner, Gregory Joseph Nelson, was convicted at jury trial upon charges of first degree kidnapping and ~~sexual~~ lewd conduct w/ a minor under 16. No DNA evidence was available at the time of trial, because the technology for said testing was not available. Evidence exists that was admitted at trial in the form of a sex crime kit, and underwear, and extracts made therefrom, which can now be subjected to DNA testing to clear the Petitioner from the charged offenses. The said admitted evidence, states Exhibit 2 and 6, was subject to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material respect.

### Prima Facie Case

Pursuant to Idaho Code section 19-4902(C)(1) and (2), requires Petitioner to present a prima facie case that: 1) Identity was an issue in the trial which resulted in his ~~own~~ conviction; and 2) The evidence sought to be tested has been subject to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material respect.

Brief In support - 2

## A. Identity

Identity was an issue at trial. Petitioner entered a plea of not guilty to both charges.

A tape recorded interview between petitioner and Detective Robert Flaten was entered into evidence at trial, and was transcribed as part of the trial transcript/record. During the said interview, the following exchange is in evidence:

Detective Flaten: ".... Is there any reason that you can think of that we're going to ~~find~~ have a positive match for your sperm, your skin and your body parts recovered in her private area? Mr. Nelson: Excuse me? Detective Flaten: When we do these, at the time, at the hospital, when we send these tests off to the lab, the tests are done, what we've got at the hospital today, is there any reason that we are going to find a scientific match proving that that's you versus someone else? Is there any reason in the world. Mr. Nelson: It has to be someone else." in. p. 796, ls. 12-25.

Moreover, as the affidavit of Gregory Joseph Nelson in support of Petition for DNA testing reflects, the complaining witness, K.M., was not honest in her testimony - there are numerous instances of material inconsistencies between what she told others and her sworn trial testimony. This

is inescapable, and, incontrovertible.<sup>1</sup>

### B. Chain of Custody

The items petitioner is requesting to be DNA tested were subjected to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material respect - the state, through Ada County Deputy Prosecuting attorneys, sought to have said items of evidence, admitted into evidence at trial, and the same was admitted into evidence at trial by the trial court. *Id.*, pp. 726-727. The admission of this evidence was upheld on appeal, Supreme Court No. 22666. The state cannot, now, claim that this evidence is now somehow faulty, contrary to I.C. section 19-4902(c)(2), Idaho Court Administrative Rule 38, mandated the preservation of this evidence in the court's own vault, in this type of case, since the 1995 trial.

### Conclusion

This Court should enter an appropriate Order, whereby directing the requested DNA testing. Once the DNA testing of the requested

Brief In Support - 4



items comes back, showing that Petitioner's DNA is not present on any of the tested evidence, this Court should order the appropriate relief and release Petitioner from the custody of the Idaho State Board of Correction.

Respectfully submitted on this 31st day of January, 2011.

Gregory D. Nelson  
Gregory D. Nelson  
Petitioner

1 The said affidavit does not reflect all of the inconsistencies.

Brief In support-5

FILED  
Friday, February 04, 2011 at 02:10 PM  
CHRISTOPHER D. RICH, CLERK OF THE COURT

By:   
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON, PLAINTIFF  
Plaintiff(s)

vs

STATE OF IDAHO, DEFENDANT  
Defendant(s)

CASE NO. CV-PC-2011-02496

CERTIFICATE OF MAILING

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the: **PETITION FOR THE PERFORMANCE OF FORENSIC DEOXYRIBONUCLEIC ACID (DNA) TESTING - I.C. SECTION 19-4902(B)** as notice pursuant to Rule 77 (d) I.R.C.P. to each of the parties or attorneys of record in this cause in envelopes addressed as follows:

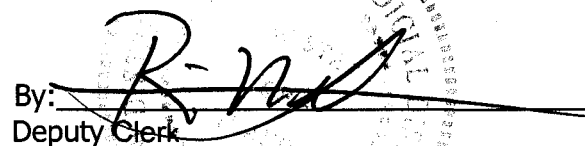
ADA COUNTY PROSECUTING ATTORNEY  
INTEROFFICE MAIL

ADA COUNTY PUBLIC DEFENDER  
INTEROFFICE MAIL

GREGORY J NELSON  
381 W HOSPITAL DR  
OROFINO ID 83544

Dated: Friday, February 04, 2011

CHRISTOPHER D. RICH  
Clerk of the Court

By:   
Deputy Clerk

FILED  
Tuesday, February 08, 2011 at 04:12 PM  
CHRISTOPHER D. RICH, CLERK OF THE COURT

BY

Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

**GREGORY JOSEPH NELSON**

Petitioner,

VS.

**STATE OF IDAHO**

Respondent.

CASE NO. CV-PC-2011-02496

NOTICE OF HEARING

The Court has set this matter for:

**MOTION FOR DNA TESTING.....THURSDAY, MARCH 03,**  
**2011 @ 11:00 AM.**

Dated Tuesday, February 08, 2011

*Darla S. Williamson*

DARLA WILLIAMSON

District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on Tuesday, February 08, 2011, I mailed  
(served) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY  
INTERDEPARTMENTAL MAIL

GREGORY J NELSON  
381 W HOSPITAL DR  
OROFINO ID 83544

CHRISTOPHER D. RICH  
Clerk of the District Court

By:  Deputy Court Clerk

BY: 

Deputy Clerk

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

**GREGORY JOSEPH NELSON,**

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-02496

ORDER TO TRANSPORT

It appearing that the above-named Petitioner is in the custody of the Idaho Department of Corrections, and that it is necessary that **GREGORY JOSEPH NELSON** be brought before this Court for **MOTION FOR DNA TESTING ON THURSDAY, MARCH 03, 2011 AT 11:00 AM.**

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho Department of Corrections release the said Petitioner to the Ada County Sheriff for the purpose of the aforementioned appearance and retake **GREGORY JOSEPH NELSON** into

ORDER TO TRANSPORT

custody from the Sheriff upon **GREGORY JOSEPH NELSON** return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: Tuesday, February 08, 2011



---

DARLA WILLIAMSON  
District Judge

ORDER TO TRANSPORT

000057

## **CERTIFICATE OF MAILING**

I hereby certify that on TUESDAY, FEBRUARY 08, 2011, I mailed  
(served) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY  
INTERDEPARTMENTAL MAIL

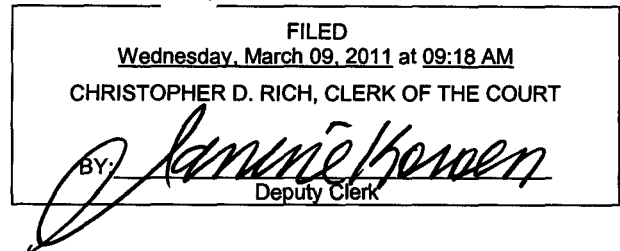
GREGORY J NELSON  
381 W HOSPITAL DR  
OROFINO ID 83544

Department of Corrections  
Faxed

Ada County Jail  
Faxed

CHRISTOPHER D. RICH  
Clerk of the District Court

By:  \_\_\_\_\_  
Deputy Court Clerk



**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

In the Matter of:

GREGORY JOSEPH NELSON,  
Petitioner,

vs.

STATE OF IDAHO,  
Respondent.

Case No. CV-PC-2011-02496

ORDER TO TRANSPORT

It appearing that the above-named Petitioner is in the custody of the Idaho Department of Corrections, and that it is necessary that **GREGORY JOSEPH NELSON** be brought before this Court for **Motion on Thursday, April 14, 2011 at 11:00 AM.**

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho Department of Corrections release the said Petitioner to the Ada County Sheriff for the purpose of the aforementioned appearance and retake **GREGORY JOSEPH NELSON** into

ORDER TO TRANSPORT

jh



custody from the Sheriff upon **GREGORY JOSEPH NELSON** return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: Wednesday, March 09, 2011

A handwritten signature in cursive script, reading "Darla S. Williamson", written in dark ink.

---

DARLA WILLIAMSON  
District Judge

ORDER TO TRANSPORT

000060

## **CERTIFICATE OF MAILING**

I hereby certify that on WEDNESDAY, MARCH 09, 2011, I mailed  
(served) a true and correct copy of the within instrument to:

Department of Corrections  
Faxed

Ada County Jail  
Faxed

CHRISTOPHER D. RICH  
Clerk of the District Court

By: \_\_\_\_\_  
Deputy Court Clerk

TIME RECEIVED  
April 21, 2011 3:30:38 PM MDT

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NO. \_\_\_\_\_ FILED 12:40  
A.M. \_\_\_\_\_ P.M.

**APR 22 2011**

**CHRISTOPHER D. RICH, Clerk**  
By JANINE KORSEN  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Julianne Meehan**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

**Case No. CV-PC-2011-02496**

**STIPULATION  
REGARDING SEALING,  
TRANSPORTATION AND  
DNA TESTING OF TRIAL  
EVIDENCE IN  
CRFE00000021080**

**COMES NOW**, Julianne Meehan, Deputy Prosecuting Attorney for Ada County, State of Idaho, and Joseph Ellsworth, Attorney for Defendant (Petitioner), stipulate and agree to the following procedures regarding the sealing, transportation and DNA testing of trial evidence in CRFE-00000021080:

1. That the Rape Kit (admitted as State's exhibit no.2) and Bag w/ Underwear (admitted as State's exhibit no.6) are presently under the custody of the Ada County EXHIBITS/EVIDENCE CLERK. (See attached Trial Exhibit List).

**STIPULATION REGARDING SEALING, TRANSPORTATION AND DNA TESTING  
OF TRIAL EVIDENCE IN CRFE00000021080 (NELSONNelson), Page 1**

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*JM*

TIME RECEIVED

April 21, 2011 3:30:38 PM MDT

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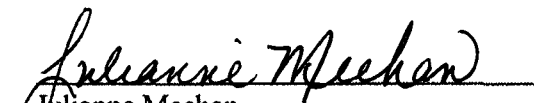
003/003

2. That Sean O'Connor, Investigator for the Ada County Prosecutor's office shall seal with evidence tape the Rape Kit which is currently unsealed.
3. That Sean O'Connor, Investigator with the Ada County Prosecutor's Office shall transport the Rape Kit (sealed condition) and Bag w/ Underwear to the Idaho State Forensic Lab.
4. Once the Rape Kit and Bag w/ Underwear are received by the Idaho State Forensic Lab, lab personal shall inventory the Rape Kit and Bag w/ Underwear to determine the exact contents of the exhibits. The inventory shall be provided to Julianne Meehan who will then provide a copy a copy to Joseph Ellsworth. At that time the State and Defense contemplate entering into an additional stipulation regarding possible DNA testing of the Rape Kit and Bag w/ Underwear.
5. If any of the above items are lost or destroyed during the testing or transportation from the Ada County Clerk's office to the lab, the defendant will not object to the admission of any of the above items or test results in any proceeding on grounds of lack of chain of custody, foundation or the absence of the item itself

DATED this 22 day of April, 2011.

**GREG H. BOWER**

Ada County Prosecuting Attorney

  
 Julianne Meehan  
 Deputy Prosecuting Attorney


  
 Joseph Ellsworth  
 Attorney for Defendant

EXHIBIT LIST

August 14, 1995

Judge: Daniel T. Eismann

Clerk: Jamie Smith

HCR21080 STATE OF IDAHO V. GREGORY JOSEPH NELSON JURY TRIAL

Prosecutor: Julianne Meehan

Public Defender: Gus Cahill

Jean Fisher

Pro Se

BY	#	DESCRIPTION	STATUS
STATE	1	Cloth bag w/ coins	Admitted 8-15-95
STATE	2	Rape Kit	Admitted 8-18-95
STATE	6	Bag w/ underwear	Admitted 8-18-95
STATE	8	Paper bag w/ writing	Admitted 8-18-95
STATE	8a	Baby Oil	Admitted 8-18-95
STATE	9	Photo of outside trialer	Admitted 8-15-95
STATE	9a	Photo of baby oil in cabinet	Admitted

00388  
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			8-15-95
STATE	9b	Photo of back of trailer	Admitted
			8-15-95
STATE	9c	Photo of front of trailer	Admitted
			8-15-95
STATE	10	Drawing by Margaret Henbest	Admitted
			8-15-95
STATE	11	Video Deposition-Stevens	Identified
			8-15-95
STATE	12	Poster Board-illustration	Admitted
			8-15-95
STATE	13	Graph of Misc. Items	Admitted
			8-18-95
STATE	14	Police Statement-Clifford	Identified
			8-15-95
STATE	15	Graph of Anal Swab	Admitted
			8-18-95
STATE	16	Graph of Baby Oils	Admitted
			8-18-95
DEFENSE	A	Drawing by Brett Quilter	Admitted
			8-15-95
DEFENSE	B	Exam Record-Drake	Admitted
			8-16-95
DEFENSE	C	Assault Evidence Kit Document	Identified
			8-15-95
DEFENSE	D	Sexual Assault Info. Form	Identified
			8-16-95
DEFENSE	E	Emergency Dept. Health Hist.	Identified
			8-16-95
DEFENSE	F	Audio Tape-Det. Flaten	Admitted

			8-18-95
DEFENSE	G	Partial Grand Jury Transcript	Admitted
			8-18-95
DEFENSE	H	CARES video	Admitted
			8-18-95
DEFENSE	I	Photo of Kitchen/Bed	Admitted
			8-18-95
DEFENSE	J	Photo of Stove/Sink	Admitted
			8-18-95
DEFENSE	K	Order case # IC 94-875445	Admitted
			8-18-95
DEFENSE	L	Drawing of trailer	Admitted
			8-18-95

APR 22 2011

CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Julianne Meehan**  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,	)	
	)	Case No. CV PC 2011 02496
Petitioner,	)	
	)	<b>ORDER BASED ON</b>
vs.	)	<b>STIPULATION REGARDING</b>
	)	<b>SEALING,</b>
THE STATE OF IDAHO,	)	<b>TRANSPORTATION AND</b>
	)	<b>DNA TESTING OF TRIAL</b>
Respondent.	)	<b>EVIDENCE IN</b>
_____	)	<b>CR-FE-0000-0021080</b>

The Stipulation Regarding Sealing, Transportation and DNA Testing of Trial Evidence having come before the Court and good cause being shown,

**IT IS HEREBY ORDERED AND THIS DOES ORDER**, that the following procedures be followed to allow for additional DNA testing of the evidence submitted in the trial under Ada County Case number CR-FE-0000-0021080.

**ORDER BASED ON STIPULATION REGARDING SEALING,  
TRANSPORTATION AND DNA TESTING OF TRIAL EVIDENCE IN CR-FE-  
0000-0021080 (NELSON), Page 1**

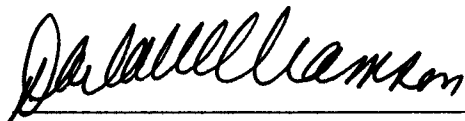
000067



1. That the Rape Kit (admitted as State's exhibit no.2) and Bag w/ Underwear (admitted as State's exhibit no.6) are presently under the custody of the Ada County EXHIBITS/EVIDENCE CLERK. (See attached Trial Exhibit List).
2. That Sean O'Connor, Investigator for the Ada County Prosecutor's office shall seal with evidence tape the Rape Kit which is currently unsealed.
3. That Sean O'Connor, Investigator with the Ada County Prosecutor's Office shall transport the Rape Kit (sealed condition) and Bag w/ Underwear to the Idaho State Forensic Lab.
4. Once the Rape Kit and Bag w/ Underwear are received by the Idaho State Forensic Lab, lab personal shall inventory the Rape Kit and Bag w/ Underwear to determine the exact contents of the exhibits. The inventory shall be provided to Julianne Meehan who will then provide a copy a copy to Joseph Ellsworth. At that time the State and Defense contemplate entering into an additional stipulation regarding possible DNA testing of the Rape Kit and Bag w/ Underwear.
5. If any of the above items are lost or destroyed during the testing or transportation from the Ada County Clerk's office to the lab, the defendant will not object to the admission of any of the above items or test results in any proceeding on grounds of lack of chain of custody, foundation or the absence of the item itself

**IT IS SO ORDERED.**

DATED this 22 day of April 2011.



Darla S. Williamson  
District Judge

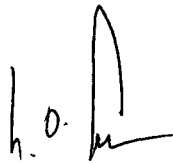
**RECEIPT OF EXHIBIT(S)**

**CASE NUMBER #** CR-FE-0000-0021080 / H0021080

Received from the clerk, exhibit(s) #2 RAPE KIT, #6 BAG W/ UNDERWEAR.

Exhibit submitted by: Plaintiff / Respondent / State / Defendant / Court / Other,

dated this \_\_\_\_\_ day of 4/25/11, 20\_\_\_\_.



Signature

Sean O'Connor ADA 6090

Print Name

---

**Certificate of Release**

I hereby certify that on 4/25/11, I released Exhibit # 2, 6),  
to the above named party to the case or authorized representative.

J. David Navarro  
Clerk of the District Court

By: 

Deputy Clerk

EXHIBIT LIST

August 14, 1995

Judge: Daniel T. Eismann

Clerk: Jamie Smith

HCR21080 STATE OF IDAHO V. GREGORY JOSEPH NELSON JURY TRIAL

Prosecutor: Julianne Meehan

Public Defender: Gus Cahill

Jean Fisher

Pro Se

BY	#	DESCRIPTION	STATUS
STATE	1	Cloth bag w/ coins	Admitted 8-15-95
STATE	2	Rape Kit	Admitted 8-18-95
STATE	6	Bag w/ underwear	Admitted 8-18-95
STATE	8	Paper bag w/ writing	Admitted 8-18-95
STATE	8a	Baby Oil	Admitted 8-18-95
STATE	9	Photo of outside trialer	Admitted 8-15-95
STATE	9a	Photo of baby oil in cabinet	Admitted

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			8-15-95
STATE	9b	Photo of back of trailer	Admitted
			8-15-95
STATE	9c	Photo of front of trailer	Admitted
			8-15-95
STATE	10	Drawing by Margaret Henbest	Admitted
			8-15-95
STATE	11	Video Deposition-Stevens	Identified
			8-15-95
STATE	12	Poster Board-illustration	Admitted
			8-15-95
STATE	13	Graph of Misc. Items	Admitted
			8-18-95
STATE	14	Police Statement-Clifford	Identified
			8-15-95
STATE	15	Graph of Anal Swab	Admitted
			8-18-95
STATE	16	Graph of Baby Oils	Admitted
			8-18-95
DEFENSE	A	Drawing by Brett Quilter	Admitted
			8-15-95
DEFENSE	B	Exam Record-Drake	Admitted
			8-16-95
DEFENSE	C	Assault Evidence Kit Document	Identified
			8-15-95
DEFENSE	D	Sexual Assault Info. Form	Identified
			8-16-95
DEFENSE	E	Emergency Dept. Health Hist.	Identified
			8-16-95
DEFENSE	F	Audio Tape-Det. Flaten	Admitted

DEFENSE	G	Partial Grand Jury Transcript	8-18-95 Admitted
			8-18-95
DEFENSE	H	CARES video	Admitted
			8-18-95
DEFENSE	I	Photo of Kitchen/Bed	Admitted
			8-18-95
DEFENSE	J	Photo of Stove/Sink	Admitted
			8-18-95
DEFENSE	K	Order case # IC 94-875445	Admitted
			8-18-95
DEFENSE	L	Drawing of trailer	Admitted
			8-18-95

TIME RECEIVED  
July 6, 2011 8:36:27 AM MDT

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Janine  
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SK

NO. 1002 FILED  
A.M. P.M.

**JUL 08 2011**

**CHRISTOPHER D. RICH, Clerk**  
By JAMIE RANDALL  
DEPUTY

JOSEHP L. ELLSWORTH, ISB# 3702  
1031 E. Park Blvd.  
Boise, Idaho 83712

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

**Case No. CV-PC-2011-02496**

**STIPULATION  
REGARDING PAYMENT  
FOR TESTING  
CRFE00000021080**

**COMES NOW**, Julianne Meehan, Deputy Prosecuting Attorney for Ada County, State of Idaho, and Joseph Ellsworth, Attorney for Defendant (Petitioner), and stipulate and agree that the Petitioner is indigent and without ability to pay for testing and, therefore, pursuant to Idaho Code 19-4902, the cost of testing shall be paid from funds allocated for Idaho State Police forensic testing.

**DATED** this 29<sup>th</sup> day of June, 2011.

  
Joseph L. Ellsworth, Attorney

  
Julianne Meehan, Deputy

**STIPULATION RE: PAYMENT**

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TIME RECEIVED  
July 6, 2011 8:36:27 AM MDT

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NO. 10:15 FILED         
A.M. P.M.

**JUL 12 2011**

**CHRISTOPHER D. RICH, Clerk**  
By JANINE KORSEN  
DEPUTY


JOSEHP L. ELLSWORTH, ISB# 3702  
1031 E. Park Blvd.  
Boise, Idaho 83712

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,	)	
	)	
Petitioner,	)	<b>Case No. CV-PC-2011-02496</b>
	)	
vs.	)	<b>ORDER</b>
	)	<b>REGARDING PAYMENT</b>
STATE OF IDAHO,	)	<b>FOR TESTING</b>
	)	<b>CRFE00000021080</b>
Respondent.	)	
_____	)	

Upon stipulation of Julianne Meehan, Deputy Prosecuting Attorney for Ada County, State of Idaho, and Joseph Ellsworth, Attorney for Defendant (Petitioner), the Court finds that the Petitioner is indigent and without ability to pay for testing and, therefore, pursuant to Idaho Code 19-4902, the cost of testing shall be paid from funds allocated for Idaho State Police forensic testing.

DATED this 11 day of ~~June~~ <sup>July</sup>, 2011.

  
District Judge  
Fourth Judicial District

ORDER RE: PAYMENT

000074

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:51

AUG 03 2011

CHRISTOPHER D. RICH, Clerk  
By CHRISTINE SWEET  
DEPUTY

**THERESA A. MARTIN**  
The Law Office of Theresa A. Martin  
Conflict Counsel for Ada County Public Defender  
1693 S. Spring Valley Ln. Ste. 200  
Meridian, Idaho 83642  
Telephone: (208) 695-7124  
Facsimile: (208) 888-9829  
ISB No. 7781


Attorney for Gregory Nelson

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

Gregory Nelson	)	
	)	
Petitioner,	)	<b>Case No.: CV PC 2011 02496</b>
vs.	)	
	)	
STATE OF IDAHO,	)	<b>NOTICE OF SUBSTITUTION</b>
	)	<b>OF COUNSEL</b>
Respondent.	)	

Notice is hereby given that Theresa A. Martin is hereby substituted for the Ada County Public Defender as conflict counsel for the Petitioner, Gregory Nelson, in the above-entitled case. All further pleadings in the above-entitled case should be sent to Theresa A. Martin at the above address:

DATED this 25<sup>th</sup> day of July, 2011.

  
\_\_\_\_\_  
THERESA A. MARTIN



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28 day of July, 2010, a true and correct copy of the foregoing document was served upon counsel as follows:

Ada County Prosecutor  
200 W. Front St.  
Boise, ID 83702

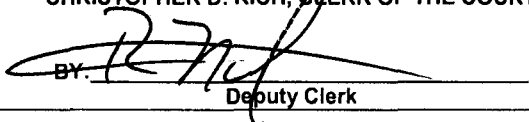
☒ U.S. Mail  
☐ Hand Delivery  
☐ Facsimile



---

Theresa A. Martin

FILED  
Thursday, October 13, 2011 at 10:59 AM  
CHRISTOPHER D. RICH, CLERK OF THE COURT

BY:   
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

October 13th, 2011.

GREGORY JOSEPH NELSON,  
Plaintiff,  
vs.  
STATE OF IDAHO,  
Defendant.

Case No. CV-PC-2011-02496

NOTICE OF REASSIGNMENT

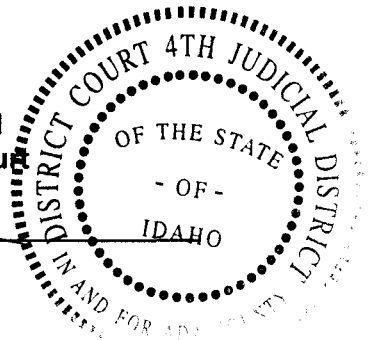
NOTICE IS HEREBY GIVEN That the above-entitled case has been reassigned to  
the Honorable LYNN G NORTON.

DATED Thursday, October 13, 2011

CHRISTOPHER D. RICH  
Clerk of the District Court

By: 

Deputy Clerk



CERTIFICATE OF MAILING

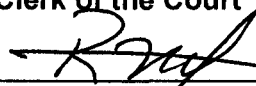
I hereby certify that on Thursday, October 13, 2011, I have delivered a true and  
accurate copy of the foregoing document to the following parties in the method indicated  
below:

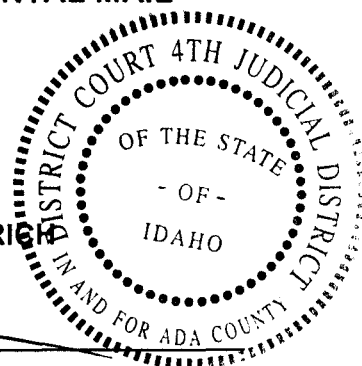
THERESA A MARTIN  
ATTORNEY AT LAW  
1693 S SPRING VALLY LN #200  
MERIDIAN ID 83642

ADA COUNTY PROSECUTING ATTORNEY  
INTERDEPARTMENTAL MAIL

GREGORY J NELSON  
#26201 ICI - O 381 W Hospital Dr  
OROFINO ID 83544

CHRISTOPHER D. RICH  
Clerk of the Court

  
Deputy Clerk



ALL HEARINGS PREVIOUSLY SET ARE VALID AND WILL BE HEARD AS SCHEDULED

NOTICE OF REASSIGNMENT-Civil

000077

FILED  
Monday, October 17, 2011 at 08:02 AM  
CHRISTOPHER D. RICH, CLERK OF THE COURT

BY:   
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

October 17th, 2011.

GREGORY JOSEPH NELSON,  
Plaintiff,  
vs.  
STATE OF IDAHO,  
Defendant.

Case No. CV-PC-2011-02496

AMENDED NOTICE OF REASSIGNMENT

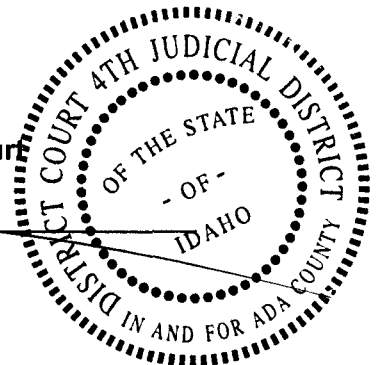
NOTICE IS HEREBY GIVEN That the above-entitled case has been reassigned to  
the Honorable DARLA S. WILLIAMSON.

DATED Monday, October 17, 2011

CHRISTOPHER D. RICH  
Clerk of the District Court

By: 

Deputy Clerk



CERTIFICATE OF MAILING

I hereby certify that on Monday, October 17, 2011, I have delivered a true and  
accurate copy of the foregoing document to the following parties in the method indicated  
below:

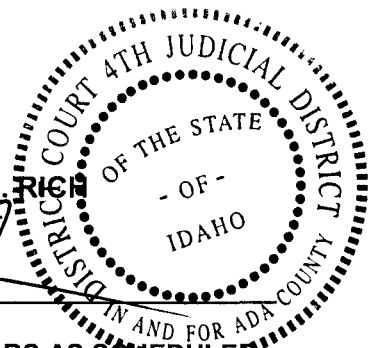
THERESA A MARTIN  
ATTORNEY AT LAW  
1693 S SPRING VALLEY LN #200  
MERIDIAN ID 83642

ADA COUNTY PROSECUTING ATTORNEY  
INTERDARTMENTAL MAIL

GREGORY J NELSON #26201  
ICI - O 381 W HOSPITAL DR  
OROFINO ID 83554

CHRISTOPHER D. RICH  
Clerk of the Court

  
Deputy Clerk



ALL HEARINGS PREVIOUSLY SET ARE VALID AND WILL BE HEARS AS SCHEDULED

NOTICE OF REASSIGNMENT-Civil

000078

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

In the Matter of:

GREGORY JOSEPH NELSON,

Petitioner,

VS.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-02496

ORDER TO TRANSPORT

It appearing that the above-named Petitioner is in the custody of the Idaho Department of Corrections, and that it is necessary that **GREGORY JOSEPH NELSON** be brought before this Court for **Review Hearing on Thursday, February 02, 2012 at 11:00 AM.**

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho Department of Corrections release the said Petitioner to the Ada County Sheriff for the purpose of the

ORDER TO TRANSPORT

↓h

aforementioned appearance and retake **GREGORY JOSEPH NELSON** into custody from the Sheriff upon **GREGORY JOSEPH NELSON** return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: Wednesday, February 01, 2012



---

DARLA S. WILLIAMSON  
District Judge

ORDER TO TRANSPORT

## CERTIFICATE OF MAILING

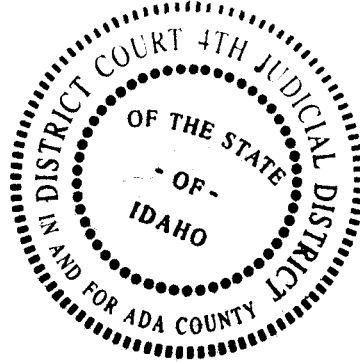
I hereby certify that on WEDNESDAY, FEBRUARY 1, 2012, I mailed  
(served) a true and correct copy of the within instrument to:

Department of Corrections  
Faxed

Ada County Jail  
Faxed

CHRISTOPHER D. RICH  
Clerk of the District Court

By:   
Deputy Court Clerk



FEB 02 2012

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
CHRISTOPHER D. RICH, Clerk  
BY JAMIE KORSSEN  
DEPUTY

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH Nelson  
STATE OF IDAHO,

Plaintiff,

vs.

State of Idaho

Defendant.

Case No. CVPC-2011-02496  
ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

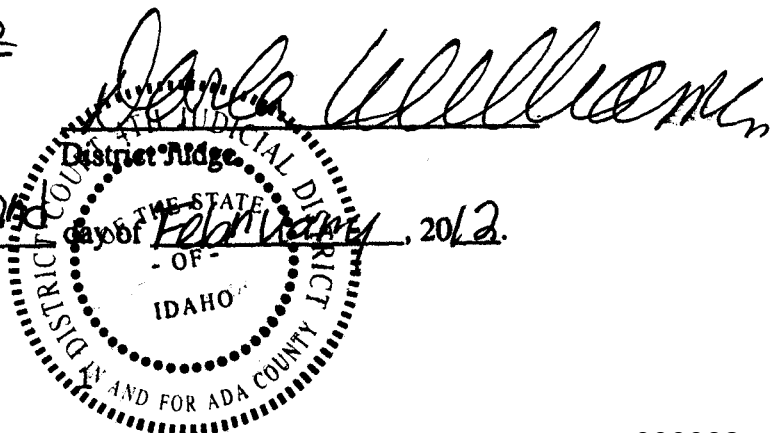
Idaho State Police investigations shall have the DNA testing (YSTR) required by Idaho Code 19-4902.

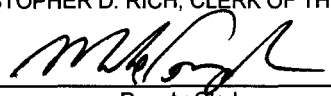
Defendant shall pay one half the cost but no greater than \$3000.00. If testing cost is less than \$6000.00, defendant shall be reimbursed the amount that is less than \$6000.00.

Dated: Feb 2, 2012

Copy hereof served on the parties this 2nd day of February, 2012.

Signed Jamie Kossen



FILED  
Monday, March 19, 2012 at 01:43 PM  
CHRISTOPHER D. RICH, CLERK OF THE COURT  
BY:   
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,  
Plaintiff,

vs

STATE OF IDAHO,  
Defendant.

Case No. CV-PC-2011-02496

**NOTICE OF REASSIGNMENT**

NOTICE IS HEREBY GIVEN That the above-entitled case has been reassigned to the Honorable LYNN G NORTON.

DATED Monday, March 19, 2012.

CHRISTOPHER D. RICH  
Clerk of the District Court

By: 

Deputy Clerk

**CERTIFICATE OF MAILING**

I hereby certify that on Monday, March 19, 2012, I have delivered a true and accurate copy of the foregoing document to the following parties in the method indicated below:

ADA COUNTY PROSECUTOR  
INTERDEPARTMENTAL MAIL

Theresa A Martin  
380 S 4<sup>th</sup> St Ste 101  
Boise ID 83702

CHRISTOPHER D. RICH  
Clerk of the Court

By: 

Deputy Clerk



APR 27 2012

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

GREGORY JOSEPH NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-2496

SCHEDULING ORDER

This matter is before the Court following Petitioner Nelson's filing of a Petition for Performance of DNA Testing filed on February 3, 2011, pursuant to I.C. §19-4901, *et seq.* (Uniform Post-Conviction Procedure Act (UPCPA)). Judge Darla Williamson signed an Order Granting Appointment of Counsel on March 3, 2011. A notice of substitution of counsel naming Theresa A. Martin as conflict counsel was filed on August 3, 2011. The court was advised on April 26, 2012 that the DNA testing has been completed.

**Amended answer:** The State of Idaho, through the Ada County Prosecuting Attorney's Office, has thirty-three (33) days, or until May 29, 2012 to file an amended answer or any other motion permitted under I.C. §19-4906.

**Motions for summary dismissal:** Either party may, at any time, move for summary dismissal. However, motions, affidavits and supporting briefs for summary disposition of the application must be filed no later than thirty (30) days after any answer is filed.

If the adverse party desires to serve opposing affidavit(s) and a response brief, it must do so within fourteen (14) days of being served any motion for summary disposition.

The moving party may thereafter serve a reply brief within seven (7) days of being served the response brief.

A hearing on any motion for summary disposition is set for June 28, 2012 at 11 a.m. and the Petitioner will be transported for that hearing.

**If no motions, affidavits, or supporting briefs for summary disposition are filed by June 28, 2012, the Court will consider this matter submitted to the Court for decision**

**pursuant to Idaho Code § 19-4901, et seq.**


**Exhibits:** Pursuant to *Esquivel v. State*, 149 Idaho 255, 259 n.3, 233 P.3d 186, 190 n.3 (Ct. App. 2009), “no part of the record from the criminal case becomes part of the record in the post-conviction proceeding unless it is entered as an exhibit.” *Id.* The content of the entire footnote in *Esquivel* is provided below.

The post-conviction record on appeal does not automatically include the record of the underlying criminal case. A post-conviction proceeding is not an extension of the criminal case from which it arises. Rather, it is a separate civil action in which the applicant bears the burden of proof imposed upon a civil plaintiff. *Paradis v. State*, 110 Idaho 534, 536, 716 P.2d 1306, 1308 (1986). No part of the record from the criminal case becomes part of the record in the post-conviction proceeding unless it is entered as an exhibit. Exhibits, as well as transcripts of the pre-trial proceedings, the trial, and sentencing hearing in the criminal case, even if previously prepared as a result of a direct appeal or otherwise, are not before the trial court in the post-conviction proceeding and do not become part of the record on appeal unless presented to the trial court as exhibits, *Roman v. State*, 125 Idaho 644, 648, 873 P.2d 898, 902 (Ct.App.1994), or unless the trial court takes judicial notice of such records from the criminal case. Idaho Rule of Evidence 201. Although the district court may have reviewed portions of the record from the underlying criminal action on its own initiative, if the petitioner does not include such material in the record on appeal from the denial of post-conviction relief, the appellate court will not consider it. *LaBelle v. State*, 130 Idaho 115, 119, 937 P.2d 427, 431 (Ct.App.1997). If either party intends to include any part of the underlying criminal record considered in the post-conviction proceedings, as part of the record on appeal, it must do so by designation in accordance with Idaho Appellate Rule 28 or by moving to augment the record pursuant to I.A.R. 30.

Exhibits may be filed with the court with a stipulation or motion to seal, if appropriate.

**ANY OBJECTION TO THIS SCHEDULING ORDER MUST BE FILED AND SERVED WITHIN FOURTEEN (14) DAYS AFTER THE DATE OF SERVICE OF THIS ORDER. IF THERE IS A TIMELY OBJECTION, THEN THE OBJECTING PARTY MUST NOTICE A SCHEDULING CONFERENCE FOR HEARING IN ADA COUNTY. FAILURE TO TIMELY OBJECT WILL WAIVE ANY OBJECTION TO THIS SCHEDULING ORDER.**

SO ORDERED AND DATED this 26<sup>th</sup> day of April, 2012.

  
Lynn G. Norton  
District Judge

## CERTIFICATE OF MAILING

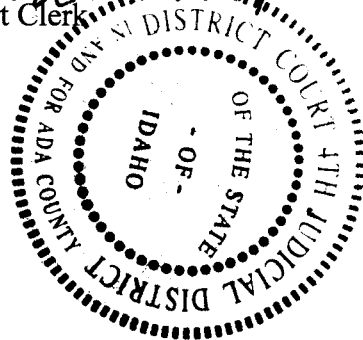
I hereby certify that on this 27<sup>th</sup> day of April, 2012, I mailed (served) a true and correct copy of the within instrument to:

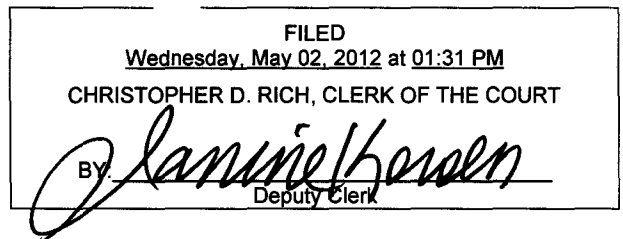
DEPUTY PROSECUTING ATTORNEY  
INTERDEPARTMENTAL MAIL

THERESA A MARTIN  
ATTORNEY AT LAW  
1693 S SPRING VALLEY LN STE 200  
MERIDIAN ID 83642

CHRISTOPHER D. RICH  
Clerk of the District Court

By:   
Deputy Court Clerk





**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY JOSEPH NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-02496

ORDER TO TRANSPORT

It appearing that the above-named Petitioner is in the custody of the Idaho Department of Corrections, and that it is necessary that **GREGORY JOSEPH NELSON** be brought before this Court for **MOTION ON THURSDAY, JUNE 28, 2012 AT 11:00 AM.**

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho Department of Corrections release the said Petitioner to the Ada County Sheriff for the purpose of the aforementioned appearance and retake **GREGORY JOSEPH NELSON** into

ORDER TO TRANSPORT

custody from the Sheriff upon **GREGORY JOSEPH NELSON** return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: Wednesday, May 02, 2012

A handwritten signature in black ink, appearing to read "Lynn G. Norton", written in a cursive style.

---

LYNN G NORTON  
District Judge

ORDER TO TRANSPORT

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## CERTIFICATE OF MAILING

I hereby certify that on WEDNESDAY, MAY 02, 2012, I mailed (served)  
a true and correct copy of the within instrument to:

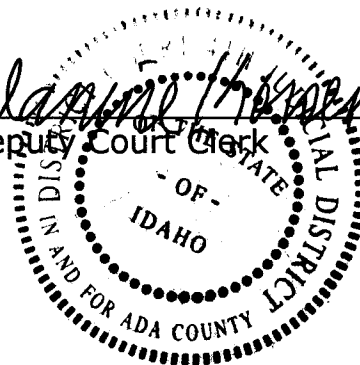
Department of Corrections  
Faxed

Ada County Jail  
Faxed

CHRISTOPHER D. RICH  
Clerk of the District Court

By: 

Deputy Court Clerk



Norton  
Janine  
5-30-12  
12

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4

MAY 29 2012

CHRISTOPHER D. RICH, Clerk  
By CHRISTINE SWEET  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Julianne Meehan**  
Idaho State Bar No. 3313  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,	)	
	)	
Petitioner,	)	Case No. CV-PC-2011-0002496
vs.	)	
	)	ANSWER TO PETITION FOR THE
STATE OF IDAHO,	)	PERFORMANCE OF FORENSIC
	)	DEOXYRIBONUCLEIC ACID (DNA)
Respondent.	)	TESTING
_____	)	

**COMES NOW**, the State of Idaho, by and through Julianne Meehan, and does hereby answer Petitioner Gregory Nelson's Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing in the above-entitled action as follows:

**Specific Answers to Nelson's Petition for DNA Testing**

1. Answering paragraph one (1) on page one (1) of Nelson's Petition, Respondent admits that during the jury trial in CRFE000021080, the victim's underwear and rape kit were admitted into evidence.
2. Answering paragraph one (1) on page two (2) of Nelson's Petition, Respondent admits that at the time of the jury trial in CRFE000021080, DNA testing was not completed

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on the victim's underwear and rape kit because the type of DNA testing required was not available.

3. Answering paragraph two (2) on page two (2) of Nelson's Petition, Respondent admits that identity was an issue in the defendant's jury trial

4. Answering paragraph three (3) on page two (2) of Nelson's Petition, Respondent admits that the victim's underwear and rape kit were admitted into evidence and that the Ada County Court Clerk's Office maintained custody of the items until they were released for DNA testing and at the completion of the testing the items were returned to the custody of the Ada County Court Clerk's Office.

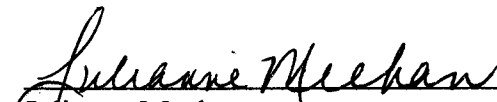
5. Answering paragraph four (4) on page two (2) of Nelson's Petition, Respondent admits that the victim's underwear and rape kit have the potential, through DNA testing, to provide evidence on the issue of identity at trial.

6. Answering paragraph two (2) on page three (3) of Nelson's Petition, Respondent admits that DNA testing has been completed as requested by Petitioner and the defendant has not been excluded as a donor of the evidence found on the victim's underwear and/or rape kit.

Therefore, Respondent respectfully requests that the Petitioner's Petition be dismissed.

**RESPECTFULLY SUBMITTED** this 29 day of May 2012.

**GREG H. BOWER**  
Ada County Prosecuting Attorney

  
Julianne Meehan  
Deputy Prosecuting Attorney



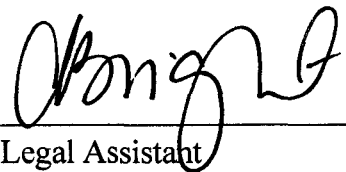
### **CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on this 23<sup>rd</sup> day of May 2012, I caused to be served; a true and correct copy of the foregoing Answer to Petition for Performance of DNA testing upon the individual(s) named below in the manner noted:

Gregory J. Nelson  
26201, ICI-0  
381 W. Hospital Drive  
Orofino, ID 83544

Theresa Martin  
1693 S. Spring Valley Ln., Ste. 200  
Meridian, ID 83642

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.

  
\_\_\_\_\_  
Legal Assistant

RECEIVED

JUN 12 2012

JUN 12 2012

Ada County Clerk

CHRISTOPHER D. RICH, Clerk  
By LARA AMES  
DEPUTY

Gregory Nelson  
26.201, IMSI, B-87  
P.O. Box 51  
Boise, Idaho 83707-0051

In the District Court of the Fourth Judicial District  
of the State of Idaho, and for the County of Ada  
Gregory J. Nelson,  
Petitioner,  
vs.  
State of Idaho,  
Respondent.

Case No. CVPC-2011-02496  
Certified Notice of Discharge  
For Cause Re: Representation  
By Theresa A. Martin,  
attorney at law

Notice is hereby given that: Theresa A. Martin,  
attorney at law, is hereby discharged, with cause, for  
reasons stated in the attached Discharge Notice, dated  
June 5, 2012, in compliance with the Idaho Rules of  
Professional Conduct, a commentary section.

Dated this 6<sup>th</sup> day of June, 2012.

Gregory J. Nelson  
Gregory J. Nelson, Petitioner

Certification

I hereby certify that the statements made in the  
attached 13 page Discharge Notice, for Cause, addressed  
to Theresa A. Martin, attorney at law, is true  
and correct. It is dated June 5, 2012.

Dated this 6<sup>th</sup> day of June, 2012,

Gregory J. Nelson  
Gregory J. Nelson, Affiant

subscribed and sworn to before me on this  
6<sup>th</sup> day of June, 2012.



A. DuWayne Shedd  
Notary Public for Idaho  
Residing at: Boise  
My Commission Expires: 11/06/13

Certificate of Service

I hereby certify, that on this 7<sup>th</sup> day of June, 2012,  
I served a copy hereof, and the attached Discharge Notice, for  
Cause, via the IMSI Prison legal mail system, and addressed to:  
1) Theresa A. Martin, Attorney at Law, 380 S. 4<sup>th</sup> St., Ste. 101, Boise, ID  
83702; 2) Julianne Meehan, Deputy Ada County Prosecutor, 200 W. Front St.,  
Room 3191, Boise, ID 83702; 3) Alan Trimming, attorney at law, 200 W. Front St.,  
Suite 1107, Boise, ID 83702.

Gregory J. Nelson  
Gregory J. Nelson

000093

~~Joseph S. Nelson~~  
26.2C MSI, B-87  
P.O. # 51  
Boise, Idaho 83707-0051

Tuesday, June 5, 2012

Literesa A. Martin  
attorney at law  
380 S. 4<sup>th</sup> St., Ste. 101  
Boise, Idaho 83702

Re: Nelson v. State, CVPC-2011-02496  
Discharge Notice, For Cause

Dear Literesa:

Per concerns from my mother,  
Rosalie S. Nelson, and, in accordance  
with Rule 1.16(a)(3), Idaho Rules of  
Professional Conduct (IRPC), you are  
hereby notified that you are discharged  
from representation, for cause, in the  
case of Nelson v. State, CVPC-2011-02496.  
Per Rule 1.16(d), IRPC, you are respectfully  
requested to return/surrender, to me,  
the entire case file, including, but,  
not limited to: the Forensic Biology  
Report of June 28, 2011; my personal  
trial transcript, w/ covers, S.C. no. 22666,  
initially sent by mail in April, 2011  
to Joseph S. Ellsworth, then, subsequently,  
transferred to you.

Page 1 of 13

Good Cause for your discharge includes, but, is not limited to:

1. Rule 1.2, IRPC, scope of Representation.  
I specifically directed you, by letter, that I wanted a "full CODIS STR" DNA test done, and to include the two wooden toothpicks contained in the step 1, special Evidence envelope (Q13) that is listed in a 1994 inventory, and testified to at trial, as containing "genital swabbings." you led me to believe DNA testing was being performed on the wooden toothpicks. It was not. I also objected to Y-STR DNA testing, because I believed Y-STR testing would produce "inconclusive" results. It did, as the DNA test results reflect.\* (It takes a match of 10 separate loci DNA profiles for the FBI to conclude that the evidence DNA tested and that of a suspect might be one and the same (source: National Geographic Magazine, Sept. 2010 issue, page 53, right-hand column, third sentence) the FBI match 10 criteria is not met in my case.) Moreover, and I did not

\* Moreover, the DNA testing produced anomalous results, and represents a mathematical paradox.

Page 2 of 13

articulate this as one of my reasons for objecting to Y-STR DNA testing, the accuser, Keri Amanda McNeil, was cleaning a travel trailer that belonged to my dad before he passed away. He lived in that travel trailer while away working as a logger, felling trees. The travel trailer had not been thoroughly cleaned since dad lived in it last, and contained blankets, sheets, towels, washcloths, sleeping bag, and other items the accuser could have picked-up Y-DNA from during that cleaning process. (Y-DNA is passed directly from father to son and is genetically identical. 90% of dust in a household is comprised of epithelium from the surface of the skin).

I was not consulted as to the type of DNA amplification kit to be used by the lab. In fact, there is an E-Mail from the lab to Det. Detham Cabaorg, ISP, indicating the amount of Y-DNA detected upon quantification of the vaginal swabs ("0.03" nanograms from 1/2 of each of 6 swabs) and anal swabs ("0.12" nanograms from 1/2 of each of 6 swabs) was so minimal that it would likely produce

Page 3 of 13

"inconclusive or no DNA results at all for Y-STRs".  
(The DNA amplification kit chosen on 2/9/12 was the "Y-filer"; this behavior dictates that the person who chose the Y-filer kit expected a pristine, and ~~the~~ larger quantity of Y-DNA to be detected upon quantification of the vaginal and anal swabs, than that which was detected on 3/21/12 by the lab, "1/3 of 1" oral swab produced "1,274.48" nanograms of Y-DNA, and the Y-filer amplification kit chosen was correct for the oral swab: it takes 1 nanogram of Y-DNA to amplify with the Y-filer kit to obtain a full Y-DNA profile loci of 16.) Had I been appropriately consulted upon notification of the minute amounts of Y-DNA produced upon quantification, I would have demanded that the lab utilize the PowerPlex®Y amplification kit, combined with the Mini-filer kit, to amplify the minute quantities of Y-DNA produced from the vaginal and anal swabs: there was only "0.03 ng" (vaginal) and "0.12 ng" (anal) of Y-DNA and the rape kit was supposed to be about 18 years old. The failure to choose the correct amplification kits is tantamount to the destruction of evidence. (X Note:

Page 4 of 13

Dr. Mantee Kuracina testified at my trial that she did the vaginal and anal swabs for the rape kit, and did not push the swabs into the accuser's vagina or rectum. Also, an examination report of the accuser states that she had a "crescentic" shaped hymen, although the same report describes the accuser as having "brown eyes" and "brown hair" - the accuser, at trial, clearly had blue eyes and blondish hair, contrary to the report of examination).

You did not advise me that you were going to limit the scope of your representation, and I would not have given any informed consent to it, if you had done so. In fact, on February 2, 2012 you told me, verbally, that "the only thing that matters is the DNA testing". In a letter response to this, I advised you that, "you are wrong": you told me on 11/11/11, that there were "toothpicks" contained in Q13 per the court-ordered "inventory". (a 4/7/94 inventory reflects that Q13 contains genital swabbings, as does the trial testimony on Q13). The fact of toothpicks now being contained in Q13,

Page 5 of 13

When it is supposed to contain genital swabbings, is evidence of a felony and must be pursued. I told you this in writing. Nevertheless, you have failed to pursue this, and have withheld from me the requested inventory of the rope kit, that turned out to be the Forensic Biology Report dated June 28, 2011. I also directed you to settle.

2. Rule 1.3. Diligence.

You advised me that your workload is "60-70" cases. The fact you could not give me a precise number and, instead, provided a ballpark number of cases, is evidence that your workload is out of control. You are too busy to be competent.

3. Rule 1.4. Communication.

I have a letter from you dated April 20, 2012, which advised me that you were going to set-up a time "in the near future" to discuss the DNA results with me. You failed to do so. This also involves Rule 1.3.

On February 27, 2012 I spoke with Stacey, a lady at your office you claimed to be your "secretary". I asked Stacey to pull my case file and tell me about the



inventory of the rope hit; specifically the part about the toothpicks. Stacey read part of the inventory, she described as a "Forensic Biology Report" dated "June 28, 2011", over the telephone to me. Stacey said the "step 1, special Evidence envelope" (Q13) contains "2 wooden toothpicks". This was alarming for several reasons, and was a red flag. (see pages 2, 5-6). Also, on 11/11/11, during a telephone conversation with you, you advised me that Joseph Ellsworth made notes about that June 28, 2011 Forensic Biology Report. (I have a letter from Joseph Ellsworth, dated July 15, 2011, advising me of his withdrawal from this case, and stating that the "inventory" of the rope hit (the, as it turned out, Forensic Biology Report of June 28, 2011) had not yet been received. If the inventory had not been received, and, since Joseph Ellsworth withdrew as of July 15, 2011, how is it, then, that you were able to report to me on 11/11/11 that Joe made notes on the very inventory he said he had yet to receive?!? I asked you this in letters, and you failed to respond to them).

Page 7 of 13

I have made numerous requests, in writing, for you to make a copy of the Forensic Biology Report dated ~~June~~<sup>July</sup> June 28, 2011 and send it to me.<sup>2</sup> I even sent to you a self-addressed stamped envelope in which to place it and send it back to me. You have not honored any of my written requests for ~~it~~ it.

On March 13, 2012, Stacey advised me that you pulled from the office, and now keep with you, the / my case file containing the Forensic Biology Report dated June 28, 2011, in response to Stacey providing to me the aforementioned information about the June 28, 2011 Report. Stacey also advised me that you told her not to accept my telephone calls unless you were at the office.<sup>3</sup> (You know that I can only use the telephone for one-hour at a time,<sup>1</sup> four times per month, because I was placed in administrative segregation over speculation of a relationship with a female registered nurse at ICIO; although I have a history of preventing the sexual assault of C.O. Darlene Lynch in 2006

unless an attorney calls out here to set up a call. Page 8 of 13

by a former death-row inmate, "Fetterly",  
(it is DOC documented), and protecting  
other female staff),

I gave Power of attorney to my  
sister, Carmen E. Jacobson, to obtain  
from you a copy of the Forensic  
Biology Report dated June 28, 2011,  
according to Carmen (aka "Tati")  
you have not returned her telephone calls  
and have avoided contact with her. I  
also gave Power of attorney to another  
person to obtain a copy of the Forensic  
Biology Report dated June 28, 2011,  
from you. I have no report, to date,  
from that person.

I know there was a hearing on  
April 26, 2012. I sent to you a letter,  
requesting to know what was said at  
that hearing, and the status of this  
case. You did not respond. I know there  
is a hearing on June 28, 2012  
(how ironic to the June 28 date) and  
a transport order to take me there for it.  
I had to write the Ada County Courthouse  
to get the info. I still do not know  
what is going on with this case, or,  
what you are doing to get me released

2 and, other documents. Page 9 of 13

from prison. I also made the decision to settle this case.

My mother advised me that you have not returned her telephone calls, as well.

Because of the information Stacey provided me with on Feb. 22, 2012, I went through about 20,000 documents, uncovering all relating to the rape kit, aka, sexual assault kit, and other items. I believe that the rape kit, admitted into evidence at my trial on Aug. 18, 1995, was destroyed, then, reconstructed. I am basing this belief upon the documents compiled, even an affidavit authored by Ms. Meehan, the deputy prosecutor. This explains the lack of Y-DNA detected upon quantification of the aforementioned vaginal swabs ("0.03 ng") and anal swabs ("0.12 ng"), because these amounts are inconsistent with any sexual contact alleged by the accuser (you could get more DNA from directly touching a doorbell), and is consistent with some sort of indirect contact, e.g. the dust in the air (the smallest seen particle of dust weighs one microgram - one nanogram is one-thousand times smaller), I can only speculate. Since

3. Later Stacey advised me that you told Stacey to tell me there was nothing to discuss until the DNA results were back. (Page 10 of 13)

you have consistently failed to communicate with me, keep your word in the april 20, 2012 letter, I have been engaging in activities to obtain an expert. The ~~expert~~<sup>expt</sup> expert is expected to say that those DNA amounts are inconsistent with the direct contact required for the penile sexual contact alleged in the collateral criminal case, but, is consistent with indirect contact, e.g. reconstruction of the rope hits. One thing is certain: there is no lawful explanation for the Q13 genital swabbings from 1994, to be transformed into toothpicks, as is reflected in the Forensic Biology Report dated June 28, 2011, and the March 2, 2012 itemization of Q13 by the lab ("fingernail" scrapings). I told you all of this, in writing, yet, you failed to act on it, or, to communicate with me about it. I get the distinct impression that you do not want me to have a copy of the Forensic Biology Report of June 28, 2011, which Report ties everything together that I currently have in my possession.

Page 11 of 13

to prove a felony (or, more than one felony), e.g. 18-2603, and a violation of Rule 38(c), Idaho Court Administrative Rules, because the rape kit was admitted into evidence and was supposed to be preserved, and protected under that Rule 38(c),

4. Rule 2.1, advisor.

You have provided me with no requested advice, e.g. investigation of the circumstances surrounding Q13 and the Forensic Biology Report dated June 28, 2011.

5. Rule 3.7, Lawyer as witness

Your behavior related to the Forensic Biology Report dated June 28, 2011 (e.g. withholding a copy of it from me after I requested it; not telling me the date of it, or, the title of it (Stacey did)), dictates you have information about it, you are not telling me and have not told me, making/transforming you into a witness about it. In fact, I am going to make plans to secure your testimony and have you examined about it, absent a settlement agreement with the state in this case.

Page 12 of 13

6. Rule 8.4. Misconduct.

I wrote to you, on more than one instance, and advised you that I want to use the Forensic Biology Report dated June 28, 2011 to file a valid claim relating to it, and, that said Report ties everything together that I have to support the claim. I would only have one-year, under existing law, to file this claim, because I was represented by counsel the date of the Report, or, until June 28, 2012 (or, June 27, 2012, because this is a leap year). So, you know that I need the Forensic Biology Report dated June 28, 2011 (unless you settled this case as I asked you to) to properly administer justice relating to the rope hit, e.g. Q13 genital swabbings transformed from 1994 inventory and 1995 testimony, to two wooden toothpicks in June 28, 2011 Forensic Biology Report and March 2, 2012 itemization of rope hit by lab: your behavior in withholding the 6/28/11 Report is prejudicial to the administration of justice - this is a very serious matter. sincerely,

Page 13 of 13

Gregory J. Nelson  
Petitioner

JUN 21 2012

CHRISTOPHER D. RICH, Clerk  
By JOANNA ORTEGA  
DEPUTYGregory J. Nelson  
26.201, /MSI, B-87  
P.O. Box 51  
Boise, ID 83707-0051In the District Court of the Fourth Judicial District  
of the State of Idaho, In and For the County of Ada  
Gregory J. Nelson,  
Petitioner,

Case No. CVPC-2011-02496

vs,

State of Idaho,  
RespondentMotion For an Order  
Ex Parte

now Comes the Petitioner, Gregory J. Nelson, and  
hereby moves this Court for its Order whereby (ex parte)  
directing Theresa A. Martin, attorney at law,  
to file with this Court and provide to this  
Petitioner, a certified copy of the Forensic  
Biology Report dated June 28, 2011, forthwith,  
and ex parte.

This motion is based upon the certified notice  
of Discharge for Cause Re: Representation by Theresa A. Martin,  
attorney at law, dated June 6, 2012, and the certified 13  
page Discharge notice dated June 5, 2012; affidavit of  
petitioner dated June 18, 2012; filed contemporaneously  
herewith; Supplemental Motion for Post-Conviction Relief I.C.  
section 19-4901 et seq. ... filed contemporaneously herewith;  
and Motion to Dismiss Criminal Charges, Rule 48(a)(2), ICR,  
filed contemporaneously herewith.

wherefore, this Court should find good cause to  
issue the requested order, forthwith, and serve a  
copy thereof upon the Petitioner.

Respectfully submitted on this 18<sup>th</sup> day of June, 2012,

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner

Motion For an Order Ex Parte - 1



Certificate of service

I hereby certify that on this 18<sup>th</sup> day of June, 2017, I caused to be served motion for an Order Ex Parte via the IM51 Prison legal mail system and addressed to each of the following:

Julianne Meehan  
Deputy Prosecuting Attorney  
200 W. Front St., Room 3191  
BOISE, ID 83702  
copy

Christopher D. Reik  
clerk of the District Court  
Ada County Courthouse  
200 W. Front St.,  
Boise, Idaho 83702  
original

Gregory J. Nelson  
Gregory J. Nelson

Motion for an Ex Parte Order - 2

JUN 21 2012

CHRISTOPHER D. RICH, Clerk  
By JOANNA ORTEGA  
DEPUTY

Gregory J. Nelson  
26.201, 1MS1, B-87  
P.O. Box 51  
Boise, ID 83707-0051

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and For the County of Ada

Gregory J. Nelson,  
Petitioner,  
vs,  
State of Idaho,  
Respondent.

Case No. CVPC-2011-02496  
Motion to Continue  
June 28, 2012 Hearing  
and Court St

Now Comes the Petitioner, Gregory J. Nelson, and  
hereby moves this Court for its order whereby  
directing that the hearing set for June 28, 2012  
be continued to a future date, and the June  
28, 2012 hearing be converted to hear Petitioner's  
Motion to Review attorneys' status filed  
contemporaneously herewith, to take testimony of Theresa A. Martin.

This Motion is made upon the certified letter  
dated June 5, 2012, attached to the certified notice  
of discharge for cause, dated June 6, 2012, and  
the affidavit of Petitioner filed contemporaneously herewith.

Petitioner was not appraised by counsel as to what  
the June 28, 2012 hearing is for. Petitioner is awaiting  
an experts evaluation of the DNA testing data from  
Sorenson Forensics; Petitioner expects the expert to  
say, at a minimum, that the Y-DNA results involved  
in the testing do not support any direct contact  
to support the charges, and the profiles generated cannot  
be concluded to a specific suspect.

The motion should be granted.

Dated: June 18, 2012,

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner

Motion to Continue June 28, 2012 hearing - 1

Certificate of service

I hereby certify <sup>that</sup> on the 18<sup>th</sup> day of June, 2012 I served motion to continue June 28, 2012 Hearing and go convert it, via the /MS/ Prison legal mail system and addressed to each of the following:

Julianne Meehan  
Deputy Ada County Prosecutor  
200 W. Front St., Room 319/ copy  
Boise, Idaho 83702

Christopher D. Rich  
clerk of the District Court original  
Ada County Courthouse  
200 W. Front St.  
Boise, Idaho 83702

Gregory J. Nelson  
Gregory J. Nelson

Motion to continue June 28, 2012 Hearing - 2

Gregory J. Nelson  
26201, IMSI, B-87  
P.O. Box 51  
Boise, ID 83707-0051

CHRISTOPHER D. RICH, Clerk  
By JOANNA ORTEGA  
DEPUTY

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and For the County of Ada

Gregory J. Nelson,  
Petitioner,

vs.

State of Idaho,  
Respondent.

Case No. CVPC-<sup>2011</sup>~~2009~~-02496  
Motion To Review  
attorneys' Representation  
Status

now comes the Petitioner, Gregory J. Nelson,  
and hereby moves this Honorable Court to Review  
the representation status of Joseph S. Ellsworth,  
and Theresa A. Martin.

This Motion is made upon the letter addressed  
to Theresa A. Martin, dated June 5, 2012, and  
based upon the following:

Petitioner recently filed "Certified Notice of  
Discharge for Cause Re: Representation of  
Theresa A. Martin, attorney at law". attached  
to it, is a letter to Theresa A. Martin, dated  
June 5, 2012, certified as true and correct.  
Petitioner served a copy of these documents upon

Motion To Review - 1

Alan Grimming, Chief, Ada County Public Defender, also providing to him a letter requesting different counsel to be assigned, based upon the filed documents.

Attached, is a letter in response to Mr. Grimming's letter of June 14, 2012. Mr. Grimming assigned Theresa A. Martin as conflicts counsel in response to previously-assigned conflicts ~~attorney~~ counsel, Joseph S. Ellsworth, withdrawing from this case by letter of July 15, 2011.

Petitioner submits the assignment of Theresa A. Martin as conflicts counsel on July 15, 2011, by Mr. Grimming, was not appropriate. Therefore, Petitioner requests this Court to Review the representation status of both attorneys, to include, but, not limited to, Petitioner's submission that it was inappropriate for the Ada County Public Defender to exercise authority over this case once Joseph S. Ellsworth had already been assigned as conflicts counsel:

1) Leave of this Court had not been given for Joseph S. Ellsworth to withdraw as Petitioner's attorney in this case; 2) a notice of substitution of counsel was not filed with the Court reflecting the signatures of both the withdrawing attorney, Joseph Ellsworth, and the new attorney, Theresa A. Martin, to avoid obtaining leave of the Court for Mr. Ellsworth to withdraw as Petitioner's attorney in this case; Rule 11(b)(1), I.R.C.P. (Ms. Martin filed "Notice of Substitution of Counsel (Martin for Gregory Nelson)", on August 3, 2011; and 3) as reflected in Petitioner's June 5, 2012 letter to Theresa A. Martin (filed with the Court as fact, certified as true and correct under oath) the "inappropriate" appointment of Ms. Martin as conflicts counsel had the resultant effect to Petitioner's actual and substantial disadvantage.

Wherefore, this Court should find good cause to Review the representation status of Joseph S. Ellsworth, and Theresa A. Martin. Once reviewed, this Court should find good cause to terminate the representation of Theresa A. Martin from this case, and direct that Joseph S. Ellsworth proceed - this Court did not grant leave for his withdrawal from this case, nor was it requested from this Court.

Respectfully, dated this 15<sup>th</sup> day of June, 2012.

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner

Certificate of Service

I hereby certify that on the 15<sup>th</sup> day of June, 2012, I caused to be served Motion to Review attorneys' Representation status, via the IMSI Prison legal mail system, and addressed to each of the following:

Julianne Meahan  
Deputy ADA Cooney, Prosecutor, copy  
200 W. Front St., Room 3191  
Boise, ID 83702

Christopher D. Rist  
Clerk of the District Court  
ADA Cooney Courtroom  
200 W. Front St.  
Boise, ID 83702

Gregory J. Nelson  
Gregory J. Nelson

Motion to Review - 3

JUN 21 2012

CHRISTOPHER D. RICH, Clerk  
By JOANNA ORTEGA  
DEPUTY

Gregory J. Nelson  
26.201, 1MS1, 0-87  
P.O. Box 51  
Boise, Idaho 83707-0051

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and For the County of Ada

Gregory J. Nelson,  
Petitioner,

vs.

State of Idaho,  
Respondent.

Case No. CVPC-2011-02496

Motion to Dismiss  
Criminal Charges,  
Rule 48(a)(2), ICR

State of Idaho,  
Plaintiff,

vs.

Gregory Joseph Nelson,  
Defendant.

Case No. HCR 21080

Now comes the Petitioner/Defendant, Gregory J. Nelson,  
pursuant to Rule 48(a)(2), ICR, whereby requesting an  
order from this Court whereby dismissing the criminal  
charges in State v. Nelson, HCR 21080.

This Motion is made upon the Certified Notice  
of Discharge for Cause Re: Representation by  
Alicia A. Martin, attorney at law, to the certified  
13 page Discharge Notice attached thereto, dated  
June 5, 2012, and the affidavit of Gregory J. Nelson  
filed contemporaneously herewith. The Certified Notice  
was filed in case no. CVPC-2011-02496, dated June 6, 2012.

Rule 48(a)(2), Idaho Criminal Rules, allows  
the Court to dismiss a criminal action for  
"any... reason, the court concludes that such  
dismissal will serve the ends of justice and the  
effective administration of the court's business".

Motion to Dismiss Criminal Charges-1

Petitioner was found guilty after trial by jury on August 18, 1995, upon charges of first degree kidnapping and lewd conduct w/a minor under 16,

as reflected in the referenced affidavit and documents, the rape kit was admitted into evidence on August 18, 1995, over the objection of Petitioner/Defendant, and was supposed to be protected from tampering or destruction, not only by chain of custody and law, but, Rule 38(C), Idaho Court administrative Rules Q13 of the rape kit was transformed from an April 9, 1994 inventory and 1995 trial testimony to Q13 that it contained "genital swabbings", to a Forensic Biology Report dated June 28, 2011 and a March 2, 2012 itemization of Q13 that it now contains two wooden toothpicks from fingernail scrapings. There is no lawful explanation for this transformation, and, is the most egregious example of injustice ever described in this jurisdiction, that only the dismissal of the charges, with prejudice, will serve the ends of justice and effectively administrate this court's business to remedy this situation from ever happening again.

Moreover, the amounts of Y-DNA detected by forensic forensics upon quantification of the vaginal swabs, "0.03 ng" and, anal, "0.12 ng", do not support the facts of this case; there was no Y-DNA profile generated from the "sperm fraction" of the DNA testing, and the Y-DNA profiles generated DO NOT meet the FBI match ID criteria for a specific suspect; the amounts of DNA, "0.03 ng", and "0.12 ng" from the swabs only support indirect contact. Direct contact is necessary to support any allegation of that nature.

The charges should, therefore, be dismissed with prejudice.  
Dated this 18<sup>th</sup> day of June, 2012,

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner/Defendant



Certificate of service

I hereby certify that on this 18<sup>th</sup> day of June, 2012, I caused to be served Motion to Dismiss Criminal Charges, Rule 48(a)(2), ICR, via the (MS) Prison legal mail system, and addressed to each of the following:

Julianne Meehan  
Deputy Ada County Prosecutor  
200 W. Front St., Room 319/  
Boise, Idaho 83702

copy

Christopher D. Rich  
Clerk of the District Court  
Ada County Courthouse  
200 W. Front St.,  
Boise, Idaho 83702

original

Gregory J. Nelson  
Gregory J. Nelson

Motion to Dismiss Criminal Charges - 3

RECEIVED

JUN 21 2012

Ada County Clerk  
Gregory J. Nelson  
26.201, MSI, B-87  
P.O. Box 51  
Boise, Idaho 83707-0051

FILED  
A.M. 11:34 P.M.

JUN 21 2012

CHRISTOPHER D. RICH, Clerk  
By JOANNA ORTEGA  
DEPUTY

In the District Court of the Fourth Judicial District of  
the State of Idaho, in and for the County of Ada

Gregory J. Nelson,  
Petitioner,

v.s.

State of Idaho,  
Respondent.

Case No. CV-PC-2011-02496

Supplemental Motion for  
Post-Conviction Relief - I.C. Section 19-4901 et seq.)  
Rule 57, Idaho Criminal Rules

Now Comes the Petitioner, Gregory J. Nelson, and hereby  
supplements the Petition/Motion dated January 31, 2011, formally  
filed on February 3, 2011, as follows: The petitioner  
alleges:

The Rape Kit, aka sex crimes kit, aka sexual  
assault evidence kit, aka sex assault kit, was  
tampered with / destroyed / reconstructed / altered,  
and/or there was perjured testimony / subornation  
to perjury, and falsified documents about it,  
and the same was concealed to avoid detection  
of it, and to prevent the petitioner and others  
from the discovery of it, and to prevent the  
petitioner from filing a legal claim/action  
about it, to obtain relief from it; e.g.  
I.C. section 18-2603; Rule 38(C), Idaho  
Court administrative Rules; article I, section  
13 to the Idaho Constitution; the Fifth, Sixth,  
and Fourteenth amendments to the  
United States Constitution.

Supplemental Motion for Post-Conviction Relief - 1

1. Petitioner's affidavit, with incorporated and attached Exhibits, dated June 18, 2012 is hereby incorporated herein by this reference thereto.
2. On February 3, 2011, Petitioner's Motion for DNA Testing, dated January 31, 2011, was formally filed with the Court, requesting, inter alia, DNA testing of State's Exhibit 2, the "Rape Kit".
3. State's Exhibit 2, the "Rape Kit", was admitted into evidence over the objection of the Petitioner/Defendant, on the morning of August 18, 1995.
4. The Certified Notice of Discharge for Cause Re: Representation by Theresa A. Martin, Attorney at Law, dated June 6, 2012, and the attached 13-page Discharge Notice, for Cause, June 5, 2012, addressed to Theresa A. Martin, Attorney at Law, certified to be true and correct, is hereby incorporated herein by this reference thereto.
5. On April 22, 2011, Julianne Meehan, Deputy Prosecuting Attorney, and Joseph Ellsworth, attorney for Petitioner/Defendant, filed Stipulation Regarding Sealing, Transportation and DNA Testing of Trial Evidence in CRFE0000021080 (aka HCR 21080), stipulating, inter alia, that State's Exhibit 2, the "Rape Kit", be inventoried by the Idaho State Forensic Lab, lab personnel "to determine the exact contents of the exhibits. The inventory shall be provided to Julianne Meehan who will then provide a copy... to Joseph Ellsworth....".
6. Based upon the April 22, 2011 Stipulation between Julianne Meehan and Joseph Ellsworth, on April 22, 2011, Dale S. Williamson, District Judge, entered Order Based on Stipulation Regarding Sealing, Transportation and DNA Testing of Trial Evidence in CR-FE-0000-0021080, limiting the inventory to be performed by Idaho State Lab personnel to the State's Exhibit 2, the "Rape Kit", and State's Exhibit 6, a Bag w/ Underware.
7. On November 11, 2011, Theresa A. Martin, Attorney at Law, advised Petitioner that the inventory of the Rape Kit reflected that Q13 of the Rape Kit contained "toothpicks".

8. Q13 of the Rape Kit was borne from an inventory of the Rape Kit on April 7, 1994, performed by Frederick Whitehurst, former special agent, FBI, and examiner at the FBI Laboratory, Washington, D.C. Petitioner's (Pet.) Affidavit (Aff.) dated June 18, 2012, Pet. Exhibit (Ex.) 1, p. 3.
9. Q13 is a "white envelope labeled 'step 1 - special Evidence (if applicable) Use swab for dried secretions on genital swabbings.' I marked this Q13 - 40328002 SYB and initialed and dated it. Envelope sealed." Pet. aff. 6/18/12, Pet. Ex. 1, p. 3.
10. Q13, as described by Frederick Whitehurst during his trial testimony the morning of Friday, August 18, 1995, contains "genital swabbings." Trial in. p. 679, Ls. 23, 24, D.C. no. 22666; Pet. aff., 6/18/12, Pet. Ex. 1.
11. Q13 as described by a 1994 FBI mailing inventory, currently in the possession of Sherena A. Martin, contains "genital swabbings."
12. Q13, the step 1, "special Evidence, dried swabs of secretions for genitalia swabbing" was testified to by Nurse Debi Drake during the August, 1995 trial; Nurse Drake did the Q13 genital swabbings for the step 1, special Evidence Envelope of the Rape Kit. Trial in. pp. 555-56, D.C. no. 22666; Pet. aff., 6/18/12, Pet. Ex. 1.
13. The April 7, 1994 inventory of the Rape Kit, performed by Frederick Whitehurst, does not reflect any inventory for a step 1, special Evidence envelope containing toothpicks from fingernail scrapings from the accuser, Kori Amanda McNeil.
14. The August, 1995 trial testimony does not reflect, or indicate, that toothpicks were used for fingernail scrapings for any part of the Rape Kit, by Dr. Marilee Kurecova, or, Nurse Debi Drake, the two individuals, and the only individuals, that testified they took samples for the Rape Kit on February 6, 1994.
15. By letter of November 11, 12, 2011, Petitioner directed Sherena A. Martin to have the Q13 toothpicks to be DNA tested.

Supplemental Motion for Post-Conviction Relief - 3  
IMSI - INDIGENT PAPER

16. Theresa A. Martin, attorney at law, and counsel for Petitioner, did not have the toothpicks DNA tested as directed from Petitioner; however, Theresa A. Martin led Petitioner to believe the toothpicks were being DNA tested. On 2/2/12 Petitioner directed Theresa, verbally, to have the toothpicks DNA tested.
17. according to Ann Bradley, Idaho State Forensic Lab, the Rape Kit has Step 1, special Evidence envelopes "provisions for fingernail scrapings (the toothpicks) and for taking dried swabbings from the external genitals ("genital swabbings") etc.", *Idaho Ex. p. 475-76, S.C. No. 22666*.
18. Theresa A. Martin did not advise Petitioner of the name, or date, of the inventory of the Rape Kit performed by personnel of the Idaho State Forensic Lab pursuant to Court Order.
19. On February 22, 2012, Petitioner telephoned: (208) 336-9401, Theresa A. Martin's law office, and spoke with "Stacey", Theresa's secretary. Stacey described the 2011 inventory of the Rape Kit as a "Forensic Biology Report" dated "June 28, 2011", the very first instance Petitioner became aware of the name of the Court-Ordered inventory and its date.
20. On February 22, 2012 Petitioner asked Stacey, over the telephone, about the toothpicks reflected in the June 28, 2011 Forensic Biology Report. Stacey read to Petitioner the section of the Report describing the toothpicks: "Step 1, special Evidence" envelope, containing "two wooden toothpicks."
21. On March 13, 2012, Petitioner telephoned: (208) 336-9401, Theresa A. Martin's law office. Petitioner's call was not accepted. Petitioner then called his mother at her home, on his mother's land-line phone. While Petitioner was waiting, Petitioner directed his mother to call: (208) 336-9401 on his mother's cell phone as to why Petitioner's call to 336-9401 was not accepted. Petitioner related to Stacey, through his mother, that Petitioner wanted Stacey to read the entire Forensic Biology

Report dated June 28, 2011 over the telephone to Petitioner. Petitioner's mother advised Petitioner that Stacey would accept the call and read to Petitioner over the telephone the entire contents of the Forensic Biology Report dated June 28, 2011.

22. Petitioner telephoned Stacey about 'thirty two minutes' later, on March 13, 2012, Stacey advised Petitioner that she had e-mailed Theresa, and Theresa had removed, and now keeps with her, Petitioner's case file containing the Forensic Biology Report dated June 28, 2011, and, had done so in response to Stacey providing to Petitioner the information about the toothpicks in that Report. Stacey was quite upset when Petitioner spoke with her over the telephone. Petitioner also spoke with attorney "Barrium" about the toothpicks and the "felony" it represents, on March 13, 2012 @ 336-9401, after Stacey.

23. Theresa A. Martin has withheld from Petitioner a copy of the Forensic Biology Report dated June 28, 2011, by virtue of her failure to honor numerous requests from Petitioner for said Report, and avoiding contact with Carmen E. Jacobsen, Petitioner's sister, whom Petitioner gave Power of Attorney, first on March 19, 2012 (and, again, when it expired) to obtain a copy of the Forensic Biology Report dated June 28, 2012 from Theresa A. Martin, in response to Petitioner's discovery from Stacey that Theresa pulled from the official Petitioner's case file containing said Report, effectively preventing Petitioner from obtaining any more information about it from Stacey.

24. Petitioner hereby reserves a right to amend this supplement based upon further evidence contained in the Forensic Biology Report dated June 28, 2011, when Petitioner finally receives a copy of it to file with this Court.

25. On April 23, 2012, Petitioner received from Theresa A. Martin a copy of a DNA testing document from Sorenson Forensics, a lab that DNA tested items from a Rape Kit. contained within that 60-page DNA testing document from Sorenson Forensics is an itemization of a rape kit, page 22: "... a white envelope, TS&I, MI, Q13, special evidence, dried secretions, fingernail (scrapings), ...". The writing from the Q13 envelope on April 7, 1994, quoted by Frederick Whitehurst on page 3 of his inventory of the Rape Kit, and the March 2, 2012 itemization of a rape kit by Sorenson Forensics to the Q13 there, DO NOT materially match to the quoted writings of the Sorenson Forensics Q13 envelope. Pet. aff., 6/18/12, Pet. Ex. 1, Case no. SF003699, Laboratory Notes, page 22.
26. The March 2, 2012 Sorenson Forensics quotation from the writing on a rape kit do not match the quotations from the April 7, 1994 inventory of the 'Sexual Assault Evidence Kit' from / by Frederick Whitehurst. Pet. aff., 6/18/12, Pet. Ex. 1, page 1, Q3: "white box labeled: 'MI2000025... Item 2... Rape Kit...'." Pet. aff., 6/18/12, Pet. Ex. 1, Case no. SF003699, Laboratory Notes, page 22.
27. In the first post-conviction case, Rehan v. State, SP-07-99-00773X0, Ground 7, this Petitioner claimed that "the rape kit was tampered with" ("Decision and Order on motion to Dismiss," p. 14); Petitioner "claimed that Debbie (sic) Drake, a nurse who examined Kori shortly after the [alleged] sexual assault, testified that she 'flicked' a pubic hair into [an] envelope of the rape kit. The Petitioner contends that because Mr. Whitehurst did not find any pubic hair in the rape kit, that evidence was either withheld from the Petitioner (it could have been checked for a DNA match) or the rape kit was tampered with. Ms. Drake testified that she did not find any pubic hair on Kori [because she said there was none growing there] (trial tr. p. 555, L.L. 18-24, p. 556, L.L. 12-14). Therefore, this allegation is not based upon the facts." D. at p. 14. However, as Petitioner's trial notes of

Nurse Drake's trial testimony clearly show, nurse Drake testified 'there was one pubic hair.' Pet. aff., 6/18/12, Pet. Ex. 1; see Pet. aff., 6/19/12, p. 7, paragraph 18, number "3)...". (Please see also, Petitioner/Defendants addendum affidavit in support of Motion for New Trial and Request for Trial argument, Nelson v. State, HCR 21080, p. 2; R, p. 353, S.C. No. 22666; "Debi Drake testified that she personally, 'flipped one (1) pubic hair into the envelope.'" This affidavit was dated and signed September 15, 1995, months before the trial transcript had been prepared for the direct appeal: Supreme Court case number: 22666. She said trial transcript does not reflect Debi Drake's testimony about the pubic hair she found and placed into the (an envelope, but, Petitioner has identified the page number of the trial transcript where this testimony should be, as matched up with Petitioner's hand-written trial notes of Debi Drake's trial testimony: 553. in, p. 553, S.C. No. 22666; Pet. aff. p. 7, paragraph 18, number "4)..."; Pet. Ex. 1, Page 553-556. First post-conviction counsel, John Miller, failed to investigate this claim/ground 7 relating to the rape kit being tampered with, or, to support it with evidence. Had first post-conviction counsel investigated it, by having the contents of a rape kit inventoried, he would have discovered the rape kit had been tampered with and/or fit the definitive claim, in whole, or in part, as reflected on page 1 of the instant Supplemental Motion for Post-Conviction Relief. This Petitioner was barred from filing any documents in case no. SP-OT-99-00773XD by the presiding judge in that case (S.C. No. 22666, R. p. 124-25; Order Barring Applicant from Filing Documents, SPOT-99-00773XD), absent terminating representation by counsel and representing himself. The Ground 7 claim of rape kit tampering was never litigated to the highest court of this state. Had John Miller investigated ground 7, and discovered the tampering of the rape kit, Petitioner



would have obtained the relief he now seeks in the instant case.

28. The May 15, 2007 letter from Sammy Swartout, w/ attached Request for Disposition of Property (also referenced in, and attached to, Ms. Meehan's affidavit) states "I believe it (the Request for Disposition of Property) states that the items that were still in property on 10/30/97 were destroyed per Detective Flaten." as reflected in said Request for Disposition of Property, the following items were requested to be destroyed per the lead detective in case no HCR 21080 (Case No. M940117 was dismissed after grand jury indictment), Detective Robert Flaten, on "10-31-97": "sex assault kit, vials, towel ref: Nelson, Gregory J.", when Detective Robert Flaten ordered the destruction of the "sex assault kit, vials (from the FBI testing of the rape kit), and towel" (the towel, item #10, was claimed by the prosecution at trial that it contained evidence linking this Petitioner to the accusations, yet, it was not requested to be admitted into evidence, nor was the towel displayed to the jury; it was also claimed by the prosecution that it was not forensically tested. Ms. Meehan is not incompetent; if she truly believed the item #10 towel had forensic value, she would have had it tested; moreover, she would have made sure it was preserved for any future testing) Detective Flaten knew that the case involving "Nelson, Gregory J." had not been closed; Detective Flaten was the lead detective in the case and he testified at Petitioner's trial; moreover, Petitioner personally examined Detective Flaten on the witness stand at Petitioner's trial. Pet. aff., 6/18/12, Pet. Ex. 1, (see also, in, S.C. No. 2264p).
29. as the Property Invoices clearly indicate, the "vials" and "towel" were destroyed. An undated Property Invoice for the "sex assault kit" (aka Rape Kit), states it was "Turned over to Court." Pet. aff., 6/18/12, Pet. Ex. 1, undated to the date the Rape Kit was turned over....".

30. No state actor involved in case no. HCR 21080, State v. Nelson, provided this Petitioner with evidence the rape kit was tampered with / destroyed / reconstructed / altered, and/or there was perjured testimony / information to perjury, and falsified documents about it, and the same was concealed to avoid detection of it, and to prevent the Petitioner from filing a sooner legal claim / action about it, to obtain relief from it, to include County of Ada and Boise City actors involved with case no. HCR 21080 or any subsequent case, which is tantamount to the concealment of it,
31. Attached to Ms. Meekins's affidavit is a Property Invoice of the sex assault kit (aka Rape Kit), stating it was "turned over to the court", without a date of it, Pet. aff., 6/18/12, Pet. Ex. 1, however, the evidence strongly suggests it was destroyed per Detective Flaten's request in the Request for Disposition of Property, and the fact that Q13 was transformed from "genital swabbings" in the 1994 inventory and 1995 Testimony, to toothpicks reflected in the Forensic Biology Report dated June 28, 2011, and the March 2, 2012 transportation of a rape kit to Q13 for "fingernail" scrapings.
- Wherefore, this Court should grant the appropriate relief including, but not limited to, Petitioner's release from the custody of the Idaho State Board of Corrections.

Dated this 18<sup>th</sup> day of June, 2012.

Gregory J. Nelson  
Gregory J. Nelson - Petitioner

State of Idaho)

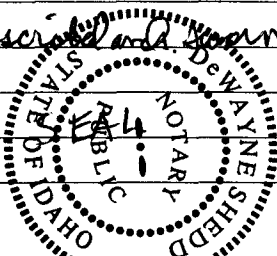
(ss:

County of Ada )

I, Gregory J. Nelson, after first being duly sworn upon my oath, depose and say that I have subscribed to the foregoing supplemental motion; that I know the contents thereof; and that the matters and allegations therein set forth are true.

Gregory J. Nelson, Petitioner  
Gregory J. Nelson

Subscribed and sworn to before me this 18 day of June, 2012



Wayne Shedd  
Notary Public for Idaho  
Residing at: Boise  
My Commission Expires: 11/06/13

IMSI - INDIGENT PAPER

Supplemental Motion For Post-Conviction Relief - 9

Certificate of Service

I hereby certify, that on the 18<sup>th</sup> day of June, 2012, I caused to be served a true and correct copy, and original as set forth below, of the above and foregoing of Supplemental Motion for Post-Conviction Relief - I.C. Section 19-4901 et seq.; Rule 57, Idaho Criminal Rules, U.S. Mail, first class, via the IMSI Prison legal mail system and addressed to each of the following:

Julianne Meehan  
Deputy Ada County Prosecutor  
200 W. Front St., Room 3191  
Boise, Idaho 83702  
copy

Christopher D. Rich  
clerk of the District Court  
Ada County courthouse  
200 W. Front St.  
Boise, Idaho 83702  
original

Gregory J. Nelson  
Gregory J. Nelson

Supplemental Motion for Post-Conviction Relief - 10

JUN 21 2012

CHRISTOPHER D. RICH, Clerk  
By JOANNA ORTEGA  
DEPUTY

Gregory J. Nelson  
26.201, MSI, B-87  
P.O. Box 51  
Boise, ID 83707-0051

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and For the County of Ada

Gregory J. Nelson,  
Petitioner,

vs.  
State of Idaho,  
Respondent;

Case No. CVPC-2011-02496

AFFIDAVIT

State of Idaho,  
Plaintiff,

vs.  
Gregory Joseph Nelson,  
Defendant.

Case No. HCR 21080

State of Idaho )  
County of Ada ) ss:

Gregory J. Nelson, after first being duly  
sworn upon his oath, deposes and says:

1. I am the Petitioner and the Defendant  
in the above-captioned cases.
2. I making this affidavit upon personal knowledge,  
and the attached exhibits, research, and studies/education.
3. I am competent to testify to the information  
contained herein. To the best of knowledge, the  
information contained herein is true and correct.

AFFIDAVIT-1

4. In 1993, I studied to become an emergency medical technician, defibrillator-rated (EMT-D), health provider C. Classes were instructed by, and proctored by, Steve DeWeese, through the volunteer Council Ambulance Service, Council, Idaho. A course book and certain medical instruments, sphygmomanometer, stethoscope, penlight, and case, black in color, was purchased through that activity.
5. I obtained a Legal assistant Certificate through the Idaho Department of Correction in the mid 90s, as a requirement to work at the former law library at ISCI.
6. In December, 2010, I obtained a Doctor of Divinity (Honorary) Degree through the Universal Life Church, Modesto, CA.
7. I have also studied Physics 101, Biology 101, basic mathematics, algebra, human anatomy (EMT-D course), culinary arts, a portion of Psychology 101, drafting, read a number of books covering such things as, hematopoietic cell lines, myeloproliferative disorders, read documents from the internet on DNA testing and related information, and watched numerous documentaries in classes and aired through the ~~Blah~~ Discovery Channel, National Geographic Channel (and National Geographic and Scientific American magazines), History Channel, Idaho Public television, History 2 channel, on such topics as household dust composition, genetics, DNA testing and techniques, medicine, weights (standard & metric), measures, fractions, theoretical physics, epithelium (which is the covering of the skin's surface, but, also membranes and tubes of the body), and more. I also read part of Gray's Anatomy, which covers, in some detail, the epithelium of the human body.
8. On April 22, 2011, in case numbered CVPC-2011-02496, the Court entered an order directing, inter alia, lab personnel at the Idaho state Forensic Lab

to inventory states Exhibit 2, the so-called "rape kit", aka, sexual assault kit, sexual assault evidence kit. I RCVD a letter from Joseph Ellworth, attorney at law, dated July 15, 2011, indicating the inventory of the rape kit had not yet been received. On August 3, 2011, Theresa A. Martin, attorney at law, filed a notice of substitution of Counsel "(Martin for Gregory Nelson)". On November 11, 2011 (Veterans Day) I telephoned, and spoke with, Theresa A. Martin. During this conversation, Theresa A. Martin indicated to me that the inventory of the rape kit reflected that Q13, the "Step 1, Special Evidence" envelope of the rape kit contained "toothpicks". This was alarming for me and was a red flag. After the telephone conversation with Theresa, I wrote her a letter and told her that I wanted the toothpicks to be DNA tested. I also requested a copy of this inventory. I RCVD no response from Theresa. I am familiar with Q13, not only from an inventory dated April 7, 1994, but, the 1995 trial testimony on Q13. The inventory dated April 7, 1994, and the trial testimony in 1995 to Q13 are all consistent to the contents of Q13: "genital swabbings". Theresa did not provide me with a date of this inventory, or the name of it.

9. I was outraged by the discovery there were now toothpicks contained in Q13, when there was supposed to be "genital swabbings" per the 4/7/94 inventory and the trial testimony on Q13.
10. On February 2, 2012, I was transported for a hearing at the Ada County Courthouse. afterwards, I was brought downstairs and placed in attorney visiting, where I spoke with Theresa A. Martin. I asked Theresa about that inventory. she thumbled through the file to a mailing inventory from 1994 on the rape kit that I sent to her, that I RCVD from the FBI pursuant to a Freedom of Information/

Privacy Act Request I filed with the FBI in 2007. I pressed Theresa to see the inventory of 2011 that she told me over the phone on 11/11/11, that said Q13 contained toothpicks. Theresa fumbled through the file and claimed the 2011 inventory was not in that file. My observations of her behavior after I asked her to see the 2011 inventory dictated Theresa was being deceptive with me. Judge Williamson summoned me to speak with Theresa.<sup>5</sup>

11. Ten (10) days later on February 22, 2012, I used the telephone and called: (208) 336-9401 and spoke with Stacey, a lady Theresa A. Martin (Theresa) claimed to be her "secretary". I called, specifically, to speak with Theresa about the 2011 inventory of the rape kit. Theresa was not there. So, I asked Stacey to pull the instant case file because I wanted to know what that inventory specifically said about the toothpicks; Theresa was rather vague about it. Stacey described the 2011 inventory as a "Forensic Biology Report," dated "June 28, 2011"; the very first instance I became aware of the name of the inventory and its specific date. Stacey read to me, over the telephone, the section of the 6/28/11 Report about the toothpicks: "Step 1, special Evidence" envelope, containing "two (2) wooden toothpicks."<sup>1</sup> This was a red flag for me and quite alarming, in part for reasons stated in the June 5, 2012 13 page discharge notice, for cause. I then spent weeks going through about 20,000 documents, looking for any material about the rape kit.

12. The April 7, 1994 inventory of the rape kit, attached, was authored by Frederick Whitehurst, former Special Agent, FBI, Washington, DC Lab.<sup>2</sup> Q13 was borne from this inventory: "Q13 10.) a white envelope, labelled 'step 1 - special Evidence (if applicable) Use swab for dried secretions or genital swabbings.' I marked this Q13 - ....". The quote within a quote came from the envelope containing the genital swabbings. On 4/23/12, I RCV'd an itemization (and DNA testing) of the rape kit by Sonenson Forensics: "...a white envelope, TS&L, Mi: ... Q13... special evidence... dried secretions... fingernail...". The writing from the Q13 envelope on 4/7/94, and the 3/2/12 itemization of the rape kit by Sonenson Forensics to Q13 DO NOT match to the quoted writings of the envelope.

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## AFFIDAVIT - 4

<sup>1</sup> according to Ann Bradley, Idaho State Forensic Lab, the rape kit, aka, "sex crimes kit", has step 1, special Evidence envelopes "provisions for fingernail scrapings (the toothpicks) and for taking dried swabbings from the external genitals (genital swabbings)". Ar. p. 475-76, S.C. No. 22666. 25

13. Moreover, the 3/2/12 Sorenson Forensics quotation from the writing on the rape kit do not match the quotations of the <sup>from</sup> quotations from the 4/7/94 inventory to the 'sexual assault Evidence Kit...': "White Box labeled: '...M12000025... Item 2... Rape Kit...'. " Page 22 of the Sorenson Forensics Laboratory Notes, reflecting the quotes relating to Q13 and the rape kit, is attached.
  14. The 1994 inventory of the rape kit does not reflect any inventory for a Step 1, Special Evidence envelope containing toothpicks from fingernail scrapings.
  15. The 1995 trial testimony from Dr. Marilee Kuracina, and a Registered Nurse, Debi Drake, who both testified that they participated in taking samples for the rape kit, do not indicate that toothpicks were used for fingernail scrapings for any Step 1, Special Evidence envelope. In August, 1995, Debi Drake, a Registered Nurse for St. Alphonsus Hospital, testified that she did the genital swabbings for Q13, the Step 1, Special Evidence envelope: Ms. Meehan: "Could you explain to the jury... what the envelope would be and if it's your writing and you took that sample?... [Nurse Debi Drake]: 'special Evidence, dried swabs of secretions for genitalia swabbing.' [Ms. Meehan]: Did you do that? [Nurse Drake]: Yes." in. pp. 555-56 (S.C. No. 22606), attached. The quotation Nurse Drake read from Q13 at trial materially matches the quotation from the Q13 envelope reflected in the April 7, 1994 inventory where Q13 was borne, and does not match the 3/2/12 itemization of Q13 by Sorenson Forensics. Moreover, Frederick Whitelhurst identified Q13 at trial on August 18, 1995, as containing genital swabbings, which "has [his] initials on it,..." in S.C. No. 22606, p. 679, ls. 23-24, attached.<sup>3</sup>
  16. On March 13, 2012, I called: (208) 336-9401, Theresa's law office. My call was not accepted. I then called my mother, Rosalie J. Nelson, on her land-line phone. While I was on my mom's land-line, I had my mom call: (208) 336-9401, using her cell phone to find-out why my call was not
- 5 Based upon my complaint letters to the Judge about Theresa's failure to communicate.

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### AFFIDAVIT- 5

Approximately one month after Frederick Whitelhurst testified at my trial, he became a public figure. Mr. Whitelhurst said that he was "under heavy pressure" from his superiors to falsify reports and to conform those reports to the prosecution's theory of each case he examined. Later, a U.S. Dept. of Justice Investigation resulted in a Report that deemed Mr. Whitelhurst to be incompetent as an examiner.



accepted. I related, through my mother to Stacey, that I wanted Stacey to read to me over the phone the Forensic Biology Report dated June 28, 2011. I indicated that I would pay for the call, (\$3.40.) My mother advised me that Stacey would accept the call and give me two-minutes and read the Forensic Biology Report of June 28, 2011 to me over the phone. After my phone call was completed with my mother, I called Stacey; "thirty-two minutes" later, Stacey advised me that she had e-mailed Theresa, and Theresa had removed, and now keeps with her, my case file containing the Forensic Biology Report dated June 28, 2011, and had done so in response to Stacey providing to me the information about that Report. Stacey also advised me that she was told by Theresa not to accept my calls unless Theresa was in the office, and that there was "nothing to discuss" until the DNA results were back from the lab. I subsequently sent a Public Records Request to the Idaho State Police Forensics Lab requesting a copy of the Forensic Biology Report dated June 28, 2011. Idaho Public Records Request was treated as a "letter" by Stephanie Altig, Deputy Attorney General, Idaho State Police, contrary to the Idaho Public Records law. See attached. I also had Darrell Baldwin, Sr., file a Public Records Request, that I authored, with the Idaho State Forensics Lab, requesting a copy of the Forensic Biology Report dated June 28, 2011. See attached - it was denied, in appropriate format, consistent with the Idaho Public Records law. Darrell delivered this Public Records Request, personally, to the Idaho State Forensic Lab's location in Meridian, ID. I also had my sister, Carmen E. Jacobsen, file a Public Records Request, that I authored, with the Idaho State Forensic Lab, requesting a copy of the Forensic Biology Report dated June 28, 2011. I do not yet have from my sister the communication denying the request. I sent to Theresa, through Stacey, a self-addressed stamped envelope

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### AFFIDAVIT - 6

3 I have also attached the police reports of officer Stevens, #444, 4 pages. It reflects, at a minimum, that "Twila", the accused's grandmother, said that the accused covered her head with a pillow, contrary to her trial testimony.

in which to place a copy of the Forensic Biology Report dated June 28, 2011, and mail back to me. My requests for the Report have been ignored and I did not receive back from Theresa's office the self-addressed stamped envelope I sent there.

17. I gave Power of attorney to my sister, Carmen E. Jacobson (aka "Tati"), on March 19, 2012, and again after it expired, to obtain, inter alia, a copy of the Forensic Biology Report dated June 28, 2011. according to Tati, Theresa has not returned her calls made to: (208) 336-9401, and: (208) 695-7124. Moreover, Tati advised me that Theresa is avoiding contact with her; Tati drove to Theresa's office, and made numerous calls to that law office re: the Forensic Biology Report dated June 28, 2011. My mother also advised me that Theresa was not returning her telephone calls, as well, e.g. toothpicks to be DNA tested.

18. Based upon the attached documents, all of which are Petitioner's Exhibit 1: 1) 4/7/94 inventory, etc., 11 pages; 2) Sorenson Forensics Lab notes, dated March 30, 2012, March 2, 2012, April 2, 2012;<sup>4</sup> 3) my hand-written trial testimony notes of Nurse Debi Drake's testimony; 4) in. pp. 553-556, S.C. No. 22466; 5) in. pp. 677-680; 6) Letter from Stephanie A. Altig, dated April 6, 2012; 7) letter to Donnell Baldwin, sr., dated 4/18/12; 8) April 19, 2012 Notice of action on Public Records Request to Mr. Baldwin; 9) May 15, 2007 letter to me w/attachment from Tammy Swantout, Records Custodian; 10) affidavit of Julianne Meehan, w/incorporated attachments, dated 3/6/2006; and 11) 5 Property Invoices, dated: 2/6/94; 2/6/94; 2/6/94; 2/6/94; 12/15/94, and a Property Disposition sheet dated last: 12/15/94 & 6/26/95, I believe that the rape kit, aka sex crimes kit, aka, sexual assault evidence kit, aka sex assault kit, was tampered with, destroyed/reconstructed, altered, and/or there was perjured testimony and falsified documents about it, and the same was concealed to avoid detection of it. I also believe that the Forensic Biology Report dated June 28, 2011 ties all of the previously-referenced documents: 1, 2, 3, 4, 5, 9, 10 and 11 to said tampering, destruction/reconstruction, alteration, and/or perjured testimony, falsification of documents about the rape kit, and the concealment of it to avoid detection. I also believe that the "vials" and "towel", listed on the Request for Disposition of Property (dated 10-30-97), along with the "sex assault kit", were destroyed per Detective Robert Flaten. The

IMSI - INDIGENT PAPER AFFIDAVIT-7

<sup>4</sup> The Sorenson Forensics DNA testing of items of a rape kit generated no Y-DNA profile from the "sperm fraction" of the DNA testing.

Request for Disposition of Property is attached as stated Exhibit 1 to Ms. Meekins' affidavit dated March 6, 2006, and, also, attached to, and referenced in the May 15, 2007 letter from Tammy Swartout, Records Custodian, Boise Police Dept.

19. Detective Robert Flaten was the lead detective in case number HCR 21080, and testified at my trial in August, 1995.
20. The "vials" listed on the Request for Disposition of Property were part of the rape kit because they contained material from the testing of the rape kit, and a leaking bottle of baby oil from my travel trailer, that were all tested together by the FBI, Frederick Whitehurst, as is reflected in his April 7, 1994 initially-dated document, attached.
21. I could also speculate that fingernail scrapings were taken from Kari McNeil, with the 2 wooden toothpicks now contained in Q13 (that are supposed to contain genital swabbers) containing the DNA of her attacker she fought, but, this evidence was never released to the defense. Perhaps Kari McNeil should be confronted about the sexual contact she had with:  
Rocky Clifford, 1904 Kern, Boise, Idaho 83705, date of birth: February 12, 1983, social security number: 519-40-5369, telephone number: (208) 343-7612, during the time period of February 6, 1994, and before this date? Please see: addendum affidavit, p. 5; R, p. 356, HCR 21080, S.C. NO. 22666, dated September 15, 1995.
22. In the first post-conviction case, SPOT99-00773\*0, Claim/ground 7, I "claimed that Debbie (sic) Drake, a nurse who examined Kari shortly after the [alleged] sexual assault, testified that she 'flicked' a pubic hair into [an] envelope of the rape kit. The Petitioner contends that because Mrs. Whitehurst did not find any pubic hair in the rape kit, that evidence was either withheld from the Petitioner (it could have been checked for a DNA match) or the rape kit was tampered with. Mrs. Drake testified that she did not find any pubic hair on Kari. (Trial Tr. p. 555, LL. 18-24, p. 556, LL. 12-14). Therefore, this allegation is not based upon the facts." Decision and order on

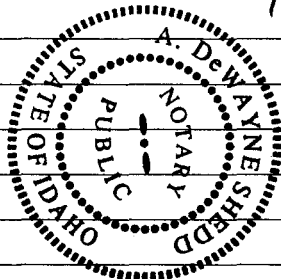
Motion to Dismiss, Case no. SP-OT-00793KD, p. 14.

23. The property invoice of the "sex assault kit" (aka Rape Kit), dated 2/16/94, Pet. Ex. 1, attached, does not contain a date it was supposedly turned over to the Court.
24. The writing on the sex assault kit: "Clear for release 08 18 95 @ 1240 hrs. ...., per Det. Flaten 8-18-95 MS Clear to Ellen Blam" is not realistic. I was at trial when the Rape Kit was admitted into evidence over my objection the morning, not afternoon, of 8/18/95. It was admitted into evidence right after Frederick Whitehurst's trial testimony.
25. I believe the public hair that is referenced in paragraph 22, above, was destroyed, based upon the same reasons as the rape kit as a whole; Debi Drake testified she flipped a public hair into an envelope of the Rape Kit. I was there.
26. A property disposition form, attached, reflects that the rape kit was returned on "12-15-94". The 12-15-94 date matches the date of the vials from FBI testing were inventoried by Det. Flaten. I believe that the "Box" listed on that Property Invoice, along with the vials, was the rape kit, which said Property Invoice indicates was destroyed along with the vials. Pet. Ex. 1, attached, Dated this 18<sup>th</sup> day of June, 2012.

Gregory J. Nelson  
Gregory J. Nelson  
Affiant

I subscribed and sworn to before me on this  
18 day of June, 2012.

SEAL



A. DeWane Shedd  
Notary Public for Idaho  
Residing at: Boise  
Commission Expires: 11/06/13

## Certificate of Service

I hereby certify that I caused to be served, and filed, a true and correct copy and original, of the affidavit, by U.S. mail, first class postage, via the IMSI legal mail system and addressed to each of the following:

Julianne Meehan  
Deputy Ada County Prosecutor  
200 W. Front St., Room 319/ copy  
Boise, ID 83702

Christopher D. Rich  
clerk of the District Court  
ada County Courthouse  
200 W. Front St., original  
Boise, ID 83702

Date: June 18, 2012

Gregory J. Nelson  
Gregory J. Nelson

AFFIDAVIT - 10

40328002 S 4B

Petitioner's Exhibit 1

Received evidence in laboratory 3/28/94 then delivered to my office through Corby assignment. I checked in the evidence on 4/1/94.

Q1. Brown paper bag marked "Kori M<sup>c</sup>Neil underpants 2-6-94 by Deb Drake RN. . . ." received in a zip lock bag sealed with heavy tape. initialled and marked. Tape saved with evidence.

Q2. Brown paper bag marked "Item #8, Bottle of Baby Oil, Triple wrapped because of leak . . . ." received in a zip lock bag sealed with heavy tape. initialled and marked. Tape saved with evidence. The wrapping allowed no contamination between contents of this specimen and other specimens.

Q3. Cardboard box labelled "Sexual Assault Evidence Kit, State of Idaho Bureau of Forensic Services, Patient KORI M<sup>c</sup>Neil, Date/Time of Exam: 2-6-94 1200 noon . . . ." The box has an evidence seal from ADP County Sheriff Boise Police DR No 403-697. The box is sealed with evidence tape of two types. The white tape dated 2-6-94 is cut. The red tape dated 3/15/94 is not cut. I cut it. Inside the box are

Q4. 1.) Brown paper bag sealed with evidence tape labelled "Wiped external genitalia with tissue" I labelled this Q4- 40328002S4B and initialled and dated it.

403280025 YB

Q5 2.) A white paper swab container marked "External Genitalia 26470 B" I marked this Q5-403280025 YB and initialed and dated it.

Q6 3.) A plastic container marked "Step 6: Swab and Smear Samples . . ." I marked this Q6-403280025 YB and initialed and dated it.

Q7 4.) A white paper box marked "VAG. ✓ ANAL \_\_\_\_\_ ORAL \_\_\_\_\_ 26470 B" containing cotton swabs. I marked this Q7-403280025 YB and initialed and dated it.

Q8 5.) A white paper box marked "VAG. \_\_\_\_\_ ANAL \_\_\_\_\_ ORAL ✓ 26470 B" containing cotton swabs. I marked this Q8-403280025 YB and initialed and dated it.

Q9 6.) A white paper box marked "VAG. \_\_\_\_\_ ANAL ✓ ORAL \_\_\_\_\_ 26470 B" containing cotton swabs. I marked this Q9-403280025 YB and initialed and dated it.

Q10 7.) A tan paper envelope sealed with tape marked "Cuttings of Swabs & tissue & their extracts 26470 B" I marked this Q10-403280025 YB and initialed and dated it.

Q11 8.) A white envelope labelled "Step 2-  
Pubic Hair Combing . . ." I marked this  
Q11-403280025 YB and initialled and dated it.

Q12 9.) A plastic container containing a glass  
slide marked "26470 Tissue Wipe Ext Gen."  
I marked this Q12-403280025 YB and  
initialled and dated it.

Q13 10.) A white envelope labelled "Step 1-  
Special Evidence (if applicable) Use swab  
for dried secretions or genital swabbing."  
I marked this Q13-403280025 YB and  
initialled and dated it. Envelope sealed.

Q14 11.) A white envelope labelled "Step 5-  
Saliva Sample . . ." I marked this  
Q14-403280025 YB and initialled and  
dated it. Envelope sealed.

Q15 12.) A white envelope labelled "Step 3-  
Pubic Hair Standards." I marked this  
Q15-403280025 YB and initialled and  
dated it. Envelope sealed.

Q16 13.) A white envelope labelled "Step 4-  
Pulled Head Hair . . ." I marked this  
Q16-403280025 YB and initialled and  
dated it. Envelope sealed.



Q2 Opened outer bag, inner plastic bag,  
inner paper bag and inner plastic bag.  
Bottle is leaking significantly but is  
not through the first inner plastic bag.

The oil is Heritage Baby Oil containing  
Mineral Oil and Fragrance. Manufactured for/  
by Crawford Supply, St Louis Mo 63132.

Remove by appropriate solvent extraction

Q1, Q2, Q4, Q5, Q7, Q9, Q10

1.) Use solvent for extraction: Hexane.

Conduct high temperature GC and FTIR on  
these to characterize the molecular weight  
distribution and hydrocarbon character.

2.) Determine if possible the perfume used,  
concentration, Acquire a sample for  
comparison.

(314) 555-1212.

Crawford Supply: 423-9939

9<sup>30</sup> am. Called Crawford. Asked for name of  
manufacturer. → Vijon (314) 423-8000.

Mark Lee.

9<sup>37</sup> am Phil Nicholson VP of Sales. Will send  
me a sample of the fragrance. (314) 255-5315

Lot # 1402.

40328002

- \* Must contact contributor to determine if hair analysis is required on hairs from the rape kit before assigning examiners.

Contacted Ann Bradley who advised that if DNA analysis was possible on hair, to conduct that analysis. No hair on comb.

4/13/94 Talked with Bob Flatten, Boise (208) 377-6758 re progress of the case.

Received fragrance and letter from Vi Son, Phil Nicholson re

- ✓ Specimens Q1, Q2, Q4, Q5, Q7 and Q9 were extracted with hexane, the hexane evaporated and ~~rediluted~~ rediluted and analyzed with hi-temp GC. Initial analyses were not successful in detecting mineral oil, however samples were redried/evaporated/concentrated.

Specimen Q1 contains hydrocarbon oil and other minor components. Analysis GC, FTIR.

- ✓ Before soaking Q1 totally in hexane I smelled Q1 prior to determine if I could detect the fragrance. I detected the fragrance very slightly, but definitely.

4/14/94 I looked at Pubic hair combings (Q11) and saw no hairs adhering to the comb or in the envelope. I did not send the hairs to H & F.

- ✓ 4/15/94 Specimens Q1, Q5, Q7 and Q9 were reextracted including the whole specimen. Specimen Q1 extraction resulted in significant solids coming off. Specimens Q5, Q7 and Q9 extracts contained obvious oily material. These extracts were placed in crimp top vials and 10 µl hexane introduced to redissolve oil for analysis.

403280025 23.

4/19/94.

Analyze with GC Q9, Q7, Q5. concentrated & reextracted.

Analyze with GC/MS & IR Q1 for presence of fragrance.

These vials are labelled Q1b solids, Q1b, Q5b, Q7b, Q9b.

8<sup>50</sup>am Thus far I have chromatograms for Q1, Q2, Q1 again, Q9 and Q4.

I have extracts for Q1, Q2, Q4, Q5, Q7, Q9 Q1b "solids", Q1b, Q5b, Q7b and Q9b.

Q4 and Q9 were not concentrated enough. microscopic exam of material in vial Q4 shows an oily-like material. however there is not enough to detect with the GC. I will dilute with only two microliters and try to run the material again.

Results of GC for Q4. Homologous series present about 9 to 10 minutes however it is very small. The small amount of material present and the obvious presence of other materials which could be hydrocarbons in nature preclude the use of FTIR for confirmation possibly.

403280025 4B

Results of GC for Q5, No oils / hydrocarbon detected at 8-10 minute retention time.

Q5b, No oils / hydrocarbon detected.

Q7, No oils / hydrocarbons detected.

Q7b, No oils / hydrocarbons detected.

Q9b Oil / hydrocarbon detected.

FTIR.

Specimens (Q4), (Q5), (Q5b), (Q7), (Q9b), (Q1), (Q2)

✓ Q4 is wiped external genitalia w/ tissue.

Q9 Anal swabs.

Q1 Underpants

Q2 Heritage Baby oil.

4/28/94

Talked w/ Julieann Meehan, the prosecutor. She would like to look at a number of baby oils from different sources. I will send her a preliminary report as well as fax her copies of the gas chromatograms from Q1, Q2, Q4, Q9 and Johnson's baby oil. (208) 364-2121 FAX# =

ADA City

364-2132

5/5/94 Received baby oil samples from Vijan and a letter dated 5/3/94. Prepared these as hexane solutions. Collected GC 60-260° after seeing no components beyond about 16 minutes.

403280025 YB

The four bottles of oil received are

- 1.) Janet Lee Baby Oil labelled "Line Purple PN 008  
Name: Baby Oil, Batch Code A337P. Date 12-3-93.
- 2.) Eckerd Baby oil, labelled Line Purple PN 008  
Name Baby Oil Code A148P. Date: 5-28-93
- 3.) Family Dollar Baby oil, labelled "Line Purple, PN 008  
Name: B.O Code 338N Date 12-3-92.
- 4.) Brita Life Baby Oil, labelled "Line Purple,  
No PN 008, No. Baby Oil. Date 5/19/92 1402.

I broke the seals on these bottles to remove the oil.

These oils were run on GC to compare to standards purchased and to Q's. The GC was only run from 60 to 260°C.

Fragrance received from Vigon (Phil Robinson) was given to Monica Kunkles to characterize on the GC-IR/MS and on GC/MS. The reason was so that she could determine if fragrance could be identified in extract from the underwear sample Q1.

Initial characterization was completed by GC-IR/MS on 4/14/94 with IR & MS spectra determined. All the fragrance components came out in the first 8 minutes of the chromatogram.

403280025 4B

These components were not definable by GC/IR/MS in the Q1 sample. The instrument requires too much sample. Then the materials were defined by GC/MS looking in Q1 for characteristic ions of fragrance components.

Were not able to locate fragrance components.

5/10/94 Called Phil Nicholson. Message machine.

He's not here. Left message.

4:00 PM. Same product Different sources of mineral oil. gallon batch to a number of customers.

Manufacturers.

Cutlerland Swan: Div. of Perrigo.

Benjamin Ansell Corp in St Louis.

Johnson's Johnson.

2 10000 gal tanks. Below 14-17000 add more. 6000<sup>gal</sup> unique batches.

5/31/94 Called Meckan. She said she had two materials more to send me for comparison. Will send them out today or tomorrow.

Arrive on 6/21/9

88 364-2121 Colleen

00257

000146

40620036

K1 ~~Bl SS~~ Carmex medicine.

K2 Vicks VapoRub.

K3 Blue Star ointment.

Extract with hexane and conduct  
hi-temp GC on and compare to  
on "1402" oil sample.

These were run on hi-temp GC. No consistency.  
The 1402 ~~spec~~ chromatogram appears different  
than when run before because of a  
change in column and conditions.

"1402" is mineral oil in lot 1402

Vijon Laboratories, Inc, manufactured 5/19/92



## Laboratory Notes

Item: 1.0 Agency No: 2 - Vaginal swabs

### Itemization

Item Description: 6 swabs, med. yellow stain, ~ 3/4 of one swab was previously cut. Swab box also C: a white sticker M: "...invest..."

Itemized By: tliang

Itemized On: Mar 2 2012 12:50PM

Outer Package: OP0005304:

White Box labeled:  
"...M12000025...Item: 2...Rape  
Kit..."

Level 1: Swab Box

Seal: Unsealed

Marked: "Q7...Vag..."

### Notes:

Itemization: OP also C: 12 other packages: a bpb, TS&I, M: "Q4...External genitalia with tissue...", a clear ziplock bag, TS, M: "Cutting from Q4...", a swab envelope, unsealed, M: "...Q5...External genitalia...", a multiple slide holder, unsealed, M: "Q6...smear samples...oral, anal and vaginal...", a swab box, unsealed, M: "Q8...oral...", a coin envelope, TS&I, M: "Q10...Cuttings of swabs and tissue and their extracts...", a white envelope, gum seal unmarked, M: "...Q11...pubic hair combings...", a double slide holder, unsealed, M: "Q12...", a white envelope, TS&I, M: "...Q13...special evidence...dried secretions...fingernail...", a white envelope, gum seal marked, M: "...Q14...Saliva sample...patient...", a white envelope, gum seal marked, M: "...Q15...Pubic hair standards...", and a white envelope, gum seal marked, M: "...Q16...Pulled head hair...". These 12 packages are NONT.

### Cutting to DNA

ST2006436

Amount Used: 1/2 of all swab(s) On: 03/02/2012 By: tliang

ST2006437

Amount Used: Multiple Tube On: 03/02/2012 By: tliang

### Notes:

### Extraction

EP2006436

Began: Mar 15 2012 11:54AM

Ended: Mar 16 2012 1:19PM

Diff-Epi

Volume (uL): 30

### Extract Type Microcon

Reagent Blank RBEP001706: 30uL

RBEP001707: 30uL

### Handler ejeskie

ejeskie - Differential Sperm Incubation: 03/15/2012

ejeskie - Epi Fraction Setup: 03/15/2012

ejeskie - Sperm Fraction Setup: 03/15/2012

ejeskie - Transfer to Microcon Final Tube: 03/16/2012

ejeskie - Transfer to Microcon Flip Tube: 03/16/2012

Notes: ST2006436 and ST2006437 were combined during extraction BBS 3-30-12

SP2006436

Began: Mar 15 2012 11:54AM

Ended: Mar 16 2012 1:22PM

Diff-Sperm

Volume (uL): 30

Petitioner's Exhibit ●  
Nurse Debi Drake's trial testimony

~~Bed~~ Good lighting? "Yes" Wash<sup>(P)</sup>?  
"No" "Never unattended" Gloves? "Yes"  
Lubricants? "No" "Sterile saline only"  
no lubricants, "Saliva samples" "Hair samples"  
"pluck eight to ten hairs from P"  
"External genitalia swabs" more than  
one. "I did the external swabs"  
Anal swab, saliva, hair "there was one pubic  
hair?" "Drew blood" Genitalia tissue.

~~Exh~~ Re - Direct

Exhibit #2 - state's - Genitalia? "yes"  
head hair? "yes" Saliva? "yes"  
pubic hair? "yes" External Genitalia?  
"yes" anal? "yes" Oral? "yes"  
pubic hair combings not on patient?  
"yes" Some she did not do and does  
not know what it is."  
writing - Kort McNeil under pants

Re X - (D)

None on patient (pubic hairs) I'm confused  
about the pubic hair!

Petitioner's Exhibit ●

Page 553

- (1) were no pubic combings in this patient, correct?
- (2) A I used the pubic comb. There wasn't
- (3) pubic hair.
- (4) Q Could you tell the jury how you did
- (5) that?
- (6) A Just gently rubbed the comb over the
- (7) pubic area and placed it in the envelope.
- (8) Q Not to be indelicate here, but I
- (9) have this sense that you have a young child's
- (10) privates, and do you have them, like, sit in a
- (11) certain way so that you can do this combing?
- (12) A Well, you can - laying on her back,
- (13) and just lift the sheet up just enough to open the
- (14) area that you need to deal with.
- (15) Q Do you put, like, something
- (16) underneath of it to catch the items or whatever
- (17) you're going to find?
- (18) A Yes, the envelope.
- (19) Q The envelope itself?
- (20) A Uh-huh.
- (21) Q Once again, in this particular case,
- (22) you did that?
- (23) A Yes.
- (24) Q And anything else that you did?
- (25) A I believe I drew blood also.

\* This is where Nurse Drake testified that she flipped one pubic hair into an envelope - I watched it up with my trial notes

Page 554

- (1) Q A blood sample from the patient?
- (2) A Yes.
- (3) Q It appears to me, or my recollection
- (4) from yesterday is that there was something done
- (5) called a genitalia tissue or something, and my
- (6) sense was that there was a towel or tissue used to
- (7) kind of wipe off the entire area of the patient;
- (8) were you involved in that?
- (9) A No.
- (10) Q Maybe I'm mistaken.
- (11) A Dr. Kuracina evaluated the patient
- (12) after I did.
- (13) Q So you didn't do that?
- (14) A I didn't.
- (15) MR. CAHILL: I think that's all I
- (16) have. Pass, Judge.
- (17) THE COURT: Any redirect?
- (18) MS. MEEHAN: Yes, Judge, just one
- (19) question. If we would could have that Exhibit
- (20) No. 2 to illustrate.
- (22) REDIRECT EXAMINATION
- (23) BY MS. MEEHAN:
- (24) Q I don't know if you have a
- (25) fingernail and you're able to break those seals on

Page 555

- (1) the front there to get that open. I'm not going to
- (2) have you touch any physical items other than
- (3) identify your writing on the envelopes. I'll have
- (4) you open that up and in there are there several
- (5) envelopes.
- (6) A Yes.
- (7) Q Could you explain to the jury - we
- (8) don't have to go in and take anything out of that,
- (9) but just again, what the envelope would be and if
- (10) it's your writing and you took that sample?
- (11) A "Wiped external genitalia with
- (12) tissue."
- (13) Q Did you do that?
- (14) A Yes.
- (15) Q Okay.
- (16) A "Pulled head hairs."
- (17) Q Again, did you do that?
- (18) A Yes, I did. "Saliva sample," and I
- (19) did that. "Pubic hair standards not on patient,"
- (20) and I did that.
- (21) Q If you would have said "none on
- (22) patient," would that mean that you did the combings
- (23) and you didn't see any pubic hair?
- (24) A Right.
- (25) Q Okay.

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- (1) A "Special evidence, dried swabs for
- (2) secretions for genitalia swabbing."
- (3) Q Did you do that?
- (4) A Yes. "External genitalia."
- (5) Q And you did that also?
- (6) A Yes. "Vaginal." And the vaginal
- (7) swab was done by Dr. Kuracina.
- (8) Q Okay.
- (9) A "Anal," and I did that, and "oral,"
- (10) and I did that. It looks like "a slide," and I
- (11) didn't do that.
- (12) Q Okay.
- (13) A "Pubic hair combings, none on
- (14) patient." Did "moist genitalia swabs."
- (15) Q You did that also?
- (16) A I did that. "Cuttings of swabs and
- (17) tissues." I did not do that. More "slides," and I
- (18) didn't do those, and I didn't do this, and I don't
- (19) know what it is.
- (20) Q Thank you. Put those things back in
- (21) there. Thank you.
- (22) Then once more, could I have you
- (23) look at what has been marked as State's Exhibit 6
- (24) for identification. And you've already seen that.
- (25) The reason why I'm asking you, if you can't see it

000150

Page 677

- (1) A Yes.  
 (2) Q That and fragrance?  
 (3) A Yes, uh-huh.  
 (4) Q I would like to direct your  
 (5) attention to this case and have you explain for the  
 (6) jury what you have done, and direct you to March of  
 (7) 1994, last year. Were you contacted by our  
 (8) forensic lab here in the state of Idaho regarding  
 (9) some testing for some lubricant?  
 (10) A Yes, I was.  
 (11) Q How was that done? How were you  
 (12) contacted; by phone, by letter?  
 (13) A It was by written communication.  
 (14) Q And in fact, did you receive some  
 (15) items from our laboratory here in Boise?  
 (16) A Yes, I did.  
 (17) Q Dr. Whitehurst, what items did you  
 (18) receive?  
 (19) A May I refer to my notes?  
 (20) Q Yes, you can.  
 (21) A Do you want me to list them?  
 (22) Q Yes, please, for the jury, what you  
 (23) received.  
 (24) A I received underpants, baby oil,  
 (25) sexual assault kit, tissue, external genitalia

Page 678

- (1) swabs, swab and smear samples, vaginal swabs, oral  
 (2) swabs, anal swabs, swab cuttings, pubic hair  
 (3) combings, a tissue wipe, genital swabbing, saliva  
 (4) sample, pubic hair standards and pulled head hair  
 (5) samples in the first submission.  
 (6) Q Was there a second submission or a  
 (7) third submission?  
 (8) A Yes. I have another submission  
 (9) where I received Carmex medicine, Vick's Vapor Rub  
 (10) and Blue Star Ointment.  
 (11) Q I'm going to show you what has been  
 (12) marked previously as State's Exhibit 2 for  
 (13) identification, State's Exhibit 6 and 8 and 8A.  
 (14) Dr. Whitehurst, first, do you recognize what's been  
 (15) marked as State's Exhibit 2, which is the box, the  
 (16) rape kit?  
 (17) A It is the box?  
 (18) Q Yes. The rape kit, I believe, if my  
 (19) numbering is right.  
 (20) A That is this item you're referring  
 (21) to? (Witness indicating.)  
 (22) Q Yes.  
 (23) A Yes. I have marked this item with  
 (24) my own markings and my initials.  
 (25) Q If you could open that, it contains

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- (1) several items, I believe, that you had listed to  
 (2) the jury just a few moments ago.  
 (3) A Okay.  
 (4) Q If you could, for the jury, could  
 (5) you go through the items. You don't have to open  
 (6) them or anything, but see whether or not you  
 (7) recognize them and if you, yourself, made any  
 (8) handwriting marks on them.  
 (9) A Okay. This item is marked "Wipe  
 (10) external genitalia with tissue," and I have marked  
 (11) that "Q4" with my initials.  
 (12) Q Okay. Move on.  
 (13) A This item here has my initials and  
 (14) it is marked "Cutting Q4," and then my initials and  
 (15) then our laboratory number on it.  
 (16) Q Okay.  
 (17) A This is marked "Q12." It is a  
 (18) container - well, I won't open it. I think it's  
 (19) got - I'm not sure what is in there, Counselor.  
 (20) Q Did you have any contact with that?  
 (21) A Yes, I did. It would have been -  
 (22) well, let's see what it is. "Tissue wipe." I have  
 (23) an envelope here I marked "Q13" which is - has my  
 (24) initials on it, and that's "Genital swabbings." An  
 (25) item I marked "Q15" which is "Pubic hair

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- (1) standards," and my initials are on it.  
 (2) Q Dr. Whitehurst, I'm going to stop  
 (3) you right there while you have that envelope in  
 (4) your hand. Did you look in that envelope that  
 (5) refers to pubic hairs? Is that pubic swabbing or  
 (6) pubic hairs that you have in your hand?  
 (7) A It's pubic hair standards.  
 (8) Q Did you look in the envelope that  
 (9) was referring to pubic hairs and contact anybody in  
 (10) your bureau regarding, perhaps, the hair analysis?  
 (11) A I did contact Chris Hopkins - his  
 (12) last name is H-o-p-k-i-n-s - about the hairs.  
 (13) There was a question that arose as to whether we  
 (14) would do a DNA analysis on the hairs. I'm not an  
 (15) expert in that field. First of all, I had to find  
 (16) out if there were hairs, if there was evidence  
 (17) sufficient to do that, and in a normal setting, I  
 (18) would look and say, you know, "It looks like hair  
 (19) to me." I think this setting requires that an  
 (20) expert would identify if the material is hair or  
 (21) not, and so I took it over to Chris Hopkins. We  
 (22) found no hair that was - well, we just found no  
 (23) hair.  
 (24) Q Looked in the envelope and there was  
 (25) no hair?



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

April 6, 2012

Gregory Nelson  
26-201, IMSI B-45  
P O Box 51  
Boise ID 83707-0051

RE: Idaho State Police Forensic Laboratory

Gregory Nelson:

Your letter to Idaho State Police Forensics Services dated March 22, 2012, was referred to me for response.

Your inquiry regarding a request for a copy of the Forensic Biology report dated June 28, 2011, must be directed through your legal counsel to the prosecuting attorney. ISP cannot respond to such inquiries directly to inmates, but only to the prosecuting attorney upon his or her request.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie A. Altig".

Stephanie A. Altig  
Lead Deputy Attorney General  
Idaho State Police

cc: Major Clark Rollins



# Idaho State Police

Service Since 1939



Colonel G. Jerry Russell  
Director

C.L. "Butch" Otter  
Governor

April 18, 2012

Mr. Darrell Baldwin, Sr.  
2128 Dunyon St.  
Eagle, ID 83616

RE: Forensic Biology Report of: June 28, 2011, Public Records Request received on 4-18-2012.

Dear Mr. Baldwin:

The availability of the records and documents you have requested is not immediately known. We will, therefore, need more time, up to the ten (10) working days provided by law, to prepare an appropriate response to your request.

Some requests may be subject to fees which will be required prior to receipt of the records. If there are costs, you will be contacted by this office prior to providing the requested records.

Please be assured that we will attend to your request as promptly as possible.

Sincerely,

Matthew Gamette  
ISPFS Lab Improvement Manager

*Greg, It looks like they are working on this. We should have some results soon as I was over there this past monday.*

*Darrell*

700 South Stratford Drive, Meridian, Idaho 83642-6202

EQUAL OPPORTUNITY EMPLOYER

000153



IDAHO STATE POLICE  
NOTICE OF ACTION ON PUBLIC RECORDS REQUEST

Name of Requestor: Darrell Baldwin Sr. Date: April 19, 2012  
Address of Requestor: 2128 Dunyon St., Eagle, Idaho 83616

**I. Request Granted**

- ☐ The requested record is enclosed.  
☐ You may inspect and photocopy the requested records during regular office hours by contacting

Records Custodian/Designee

Title

Telephone Number

**II. Request Denied in Part or Denied in its Entirety**

Your request has been processed. However, after consultation with legal counsel for the Idaho State Police, your request has been  
☐ denied in part; ☒ denied in its entirety pursuant to:

- |                                                            |                                                |                                                |                                                |
|------------------------------------------------------------|------------------------------------------------|------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> Idaho Code 9-335(1)               | <input type="checkbox"/> Idaho Code 9-337(15)  | <input type="checkbox"/> Idaho Code 9-340C(8)  | <input type="checkbox"/> Idaho Code 9-340E (5) |
| <input type="checkbox"/> Idaho Code 9-335(2)               | <input type="checkbox"/> Idaho Code 9-340A(1)  | <input type="checkbox"/> Idaho Code 9-340C(15) | <input type="checkbox"/> Idaho Code 9-340F(1)  |
| <input checked="" type="checkbox"/> Idaho Code 9-335(3)    | <input type="checkbox"/> Idaho Code 9-340B(1)  | <input type="checkbox"/> Idaho Code 9-340D(1)  | <input type="checkbox"/> Idaho Code 9-341      |
| <input type="checkbox"/> Idaho Code 9-337(6)               | <input type="checkbox"/> Idaho Code 9-340B(12) | <input type="checkbox"/> Idaho Code 9-340D(11) | <input type="checkbox"/> Idaho Code 9-342(3)   |
| <input type="checkbox"/> Idaho Code 9-337(13)              | <input type="checkbox"/> Idaho Code 9-340C(1)  | <input type="checkbox"/> Idaho Code 9-340D(15) | <input type="checkbox"/> Idaho Code 9-343(3)   |
| <input checked="" type="checkbox"/> Idaho Code 9-335(1)(c) | <input type="checkbox"/> Idaho Code 9-340C(4)  |                                                |                                                |

☐ Other/Explanation

- ☐ Investigation is pending or ongoing.  
☐ No record found.  
☐ Record not maintained in format requested, contact records custodian for more information.  
☐ ISP is not the custodian of this record, contact  
☐ ISP cannot inform you when the requested record becomes available, contact records custodian with new request.

☐ You may request these records from the \_\_\_\_\_ County Prosecuting Attorney's office.

The statutory exemptions cited above are found in Idaho's Public Writings Act and are not a complete listing of all other legal bases or privileges which may also apply.

You have the right to appeal this denial or partial denial of your request by filing a petition in conformance with the provisions of the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. Your petition must be filed in the 4th Judicial District Court of the State of Idaho within one hundred eighty (180) calendar days of the date of mailing of this notice.

**III. Additional Comments:** Request a copy of the forensic biology report and results regarding Gregory Joseph Nelson. These records are exempt from disclosure.

Sincerely,

E. Laraine McCoy  
E. Laraine McCoy, Assistant to the Director

Deputy Attorney General



**Michael F. Masterson**  
Police Chief

**Boise Police Dept.**  
7200 Barrister Drive  
Boise, Idaho 83704-9265

**Phone**  
208/577-3000

**Fax**  
208/577-3819

**TDD/TTY**  
800/377-3529

**Web**  
[www.cityofboise.org/police](http://www.cityofboise.org/police)  
[www.boisepolice.org](http://www.boisepolice.org)



**Mayor**  
David H. Bieter

**City Council**  
**President**  
Maryanne Jordan

**Council ProTem**  
Elaine Clegg

Vernon L. Bisterfeldt  
David Eberle  
Alan W. Shealy  
Jim Tibbs

## Boise Police Department

May 15, 2007

Mr Gregory Nelson  
26.201, IMSI, A-85A  
P.O. Box 51  
Boise, ID 83707-0051

Dear Mr Nelson:

RE: REQUEST FOR PUBLIC RECORD #403-697 & 403-701

In response to your letter dated May 7, 2007. I have looked through all of the property invoices and all it says about Item #12 is that it was booked into the State Lab. And yes it does say it was checked out by the court. I don't see any other reference for #12. I have also attached a copy of a disposition of property items that should have been in your original request. I believe it states that the items that were still in property on 10/30/97 were destroyed per Detective Flaten. It does say misc items left. Item #12 may have been in this request for disposition. I cannot help you with anything else, I have sent you everything we have on our microfilm.

Sincerely,

Tammy Swartout  
Records Custodian  
Administrative Support Division  
(208) 577-3820



403-701

!!!! IMMEDIATE RESPONSE NEEDED !!!!

REQUEST FOR DISPOSITION OF PROPERTY

This case is closed, per Prosecutor's Office, Case #: M940117

Property will no longer be held, but will be disposed of pursuant to your checked instructions below.

To: Det. Flaten Date: 10-30-97

From: M. Schuster (Property Officer)

DR#: 403-701 entered on 2-6-94 by you

is: Misc items left at home returned  
etc - Sex assault kit, oral towel  
ref. Nelson, Gregory J.

Request disposition instructions shown below:

☐ Return to : \_\_\_\_\_ (Name)

☐ Auction

☒ Destroy

R. Flaten  
(Officer's Signature)

10-31-97  
(Date)

Do Not Write Below This Line

RETURN COMPLETED FORM TO PROPERTY/EVIDENCE

Date:

Signature of Owner Receiving Property

Petitioner's  
Exhibit ①

3. BOOKING OFFICER R. Flaten	SERIAL No. 310	4. APPROVED BY	SERIAL No.
---------------------------------	-------------------	----------------	------------

5. YEAR	6. MAKE	7. BODY	8. LIC. NO.	YEAR	9. STATE	10. VIN. NO.
---------	---------	---------	-------------	------	----------	--------------

11. REMOVED FROM	AT	12. BY	TO
------------------	----	--------	----

13. VEHICLE RECEIVED BY: \_\_\_\_\_  
(Driver of Wrecker or Lot Attendant)      SIGNATURE \_\_\_\_\_

14. REASON ☐ ABANDONED ☐ TRAFFIC HAZARD ☐ DRIVER INCAPACITATED ☐ EVIDENCE

13. Item #	Amount	ITEMIZE AND DESCRIBE PROPERTY FULLY	Item Serial No.	Bin No.
<u>I</u>	1	PLASTIC BAG CONTAINING 2 VIALS VIS-A-VIS FBI TESTING		
<u>✓ II</u>	1	PLASTIC BAG CONTAINING 4 VIALS VIS-A-VIS FBI TESTING		
<u>✓ III</u>	1	Box		

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT  
Return evidence ref Testing @ FBI CRIME  
LAB

16. WAIVER BY FINDER The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property, as against the City of Boise nor County of Ada, Idaho. SIGNATURE:

17. PERSON PROPERTY OBTAINED FROM <b>Ida Haines</b>	ADDRESS <b>Evidence Tech @ C.J.B.</b>	PHONE NO. <b>884-7170</b>
18. OWNER'S NAME (if known)	ADDRESS	PHONE NO.

19. OWNER NOTIFIED?	20. STORED AT
<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> ATTEMPTED	<input checked="" type="checkbox"/> PROPERTY ROOM <input type="checkbox"/> _____

21. EVIDENCE OUT <i>Susan A. Crockett</i> 7-31-95	24. FINAL DISPOSITION <input type="checkbox"/> RETURNED TO OWNER <input type="checkbox"/> RETURNED TO FINDER <input type="checkbox"/> SOLD AT AUCTION
22. EVIDENCE RETURNED 8-24-95 MS	<input checked="" type="checkbox"/> DESTROYED <input type="checkbox"/> TURNED OVER TO _____ DATE: 11-3-97

23. OWNER'S SIGNATURE RECEIVING PROPERTY OR VEHICLE	25. COMMANDER AUTHORIZING DISPOSITION	SERIAL #
	<i>M. Schmitt</i>	2696

26. The records of the Boise Police Department and the Ada County Sheriff's Department find it clear to release the above described vehicle to the person whose signature appears in Block No. 23 of this form. Said person agrees to pay any and all monies required to obtain said vehicle.

SIGNATURE OF OFFICER RELEASING VEHICLE  
—Complete Block No. 23 and Block No. 24—  
Secure Owner's Identification

000158

000428006027

403-697

2. DATE  
2/6/94

TIME 0617-0620

☒ EVIDENCE      ☐ FOUND

☐ SAFE-KEEPING      ☐ IMPOUNDED☐ **RECOVERED** ☐

SERIAL No.  
444 / 454

4. APPROVED BY

**SERIAL No.**

### IMPOUNDED CAR

5. YEAR	6. MAKE	7. BODY	8. LIC. NO.	YEAR	9. STATE	10. VIN NO.
---------	---------	---------	-------------	------	----------	-------------

11. REMOVED FROM	AT	12. BY	TO
------------------	----	--------	----

TO VEHICLE RECEIVED BY: \_\_\_\_\_  
(Driver of Wrecker or Lot Attendant) SIGNATURE: \_\_\_\_\_

REASON ☐ ABANDONED ☐ TRAFFIC HAZARD ☐ DRIVER INCAPACITATED ☒ EVIDENCE

QTY	DESCRIPTION	ITEMIZE AND DESCRIBE PROPERTY FULLY	Item Serial No.	Bin No.
1	1	SEXUAL ASSAULT KIT		
<div style="border: 1px solid black; width: 100%; height: 100%; transform: rotate(45deg);"></div>				

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT

BY NANCY DRAKE AT ST ALPHONSUS RE: LEWD  
AND LASCIVIOUS, KIDNAPPING 2ND DEGREE.

16. WAIVER BY FINDER The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property as against the City of Boise nor County of Ada, Idaho.

**SIGNATURE:**

7. PERSON PROPERTY OBTAINED FROM	ADDRESS	PHONE NO.

18. OWNER'S NAME (if known)	ADDRESS	PHONE NO.
-----------------------------	---------	-----------

19. OWNER NOTIFIED? ☒ YES ☐ NO ☐ ATTEMPTED

20. STORED AT  
☐ PROPERTY ROOM ☐ \_\_\_\_\_

21 EVIDENCE OUT

## 24. FINAL DISPOSITION

## 22. EVIDENCE RETURNED

☐ RETURNED TO OWNER      ☐ DESTROYED☐ RETURNED TO FINDER      ☐ TURNED OVER TO☐ SOLD AT AUCTION      DATE:

23. OWNER'S SIGNATURE RECEIVING PROPERTY OR VEHICLE

## 25. COMMANDER AUTHORIZING DISPOSITION

**SERIAL NO.**

26. The records of the Boise Police Department and the Ada County Sheriff's Department find it clear to release the above described vehicle to the person who's signature appears in Block No. 23 of this form. Said person agrees to pay any and all monies required to obtain said vehicle.

**SIGNATURE OF OFFICER RELEASING VEHICLE**  
**—Complete Block No. 23 and Block No. 24—**  
**Secure Owner's Identification:**

☒ CONTINUATION PAGE  
☒ MISCELLANEOUS REPORT

☐ ADA COUNTY SHERIFF'S DEPARTMENT

☒ BOISE POLICE DEPARTMENT

1. Incident/Topic <b>LEWD CONDUCT WITH A MINOR</b>		2. Subject/Victim's Name <b>KORI A. McNEEL</b>		3. R.D.	4. D.R. No. <b>403-701</b>
5. Location/Address <b>1904 1/2 KEAR ST. BOISE 83</b>			6. Phone		7. Page <b>1 OF 2</b>
8. Date Occurred	9. Time Occurred	10. Route to	11. <input type="checkbox"/> File for information <input type="checkbox"/> For Hot Sheet Entry <input type="checkbox"/> Extra Patrol		12. Division

1.	I RESPONDED TO 1904 KEAR ST.
2.	REFERENCE A POSSIBLE RAPE THE VICTIM
3.	IS 10 YEAR OLD FEMALE. WHEN I ARRIVED
4.	ON SCENE KORI'S MOTHER VANESSA AND
5.	GRANDMOTHER TULLA WERE STANDING OUTSIDE THE
6.	HOUSE. KORI WAS INSIDE ON A COUCH WITH
7.	DEBBIE CLIFFORD. KORI WAS VISIBLY UPSET AND CRYING.
8.	TULLA AND VANESSA BOTH SAID THAT A
9.	WHITE MALE "BUBBA" HAD PICKED UP KORI AT
10.	APPROX. 08:00 HRS ON 02-06-94. HE TOOK KORI TO
11.	HIS TRAILER AND MADE HER COVER HER HEAD WITH
12.	A PILLOW LIKE. TULLA SAID THAT KORI TOLD
13.	HER THAT BUBBA HAD RAPED HER.
14.	Sgt. KENNIS AND OFFICER PUGH ARRIVED
15.	ON SCENE. KORI TOLD TULLA AND DEBBIE THAT
16.	BUBBA HAD TOLD HER SHE WOULD GET \$200 FOR CLEANSING
17.	HIS TRAILER IF SHE CAME OVER. I THEN HAD THE
18.	PARAMEDICS TRANSPORT KORI TO ST. AL'S WITH DEBBIE
19.	CLIFFORD.
20.	VANESSA SAID SHE <sup>THOUGHT SHE</sup> KNEW WHERE BUBBA LIVED.
21.	I GAVE VANESSA A RIDE OUT FEDERAL WAY TO

Vehicle Disposition:		Not Involved <input type="checkbox"/>	Left at Scene <input type="checkbox"/>	Removed by: _____
Transported to:		Handcuffed	Checked	Seat Belted
Ada County Jail <input type="checkbox"/> Other <input type="checkbox"/>		Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Door Locked		Y <input type="checkbox"/> N <input type="checkbox"/>		
Suspect Identified by:		Drivers License <input type="checkbox"/>	Military I.D. <input type="checkbox"/>	Verbal <input type="checkbox"/>
		Idaho State I.D. <input type="checkbox"/>	AFIS <input type="checkbox"/>	Other <input type="checkbox"/>

13. Reporting Officer <b>STEVENS</b>		Serial <b>444</b>	Date/Time <b>02-06-94 1645HRS.</b>	14. Supervisor Approving <b>RS</b>		Serial	Date/Time <b>nm</b>
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☒ CONTINUATION PAGE  
☐ MISCELLANEOUS REPORT

☐ ADA COUNTY SHERIFF'S DEPARTMENT

☒ BOISE POLICE DEPARTMENT

1. Incident/Topic <b>LEWD CONDUCT WITH A MINOR</b>		2. Subject/Victim's Name <b>KORE A. McNEIL</b>		3. R.D.	4. D.R. No. <b>403-701</b>
5. Location/Address <b>1904 1/2 KERR AVE SE 83705</b>			6. Phone		7. Page <b>2 of 2</b>
8. Date Occurred <b>02-06-94</b>	9. Time Occurred	10. Route to		11. <input type="checkbox"/> File for information <input type="checkbox"/> For Hot Sheet Entry <input type="checkbox"/> Extra Patrol	
12. Division					

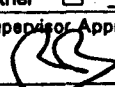
  

1.	THE UNITED CAMP GROUND. LOE TALKED TO
2.	THE MANAGER WHO IDENTIFIED AN EX-TENANT
3.	AS A POSSIBLE SUSPECT. A GREGORY J. NELSON
4.	I ASKED VANESSA IF BUBBA'S REAL NAME
5.	MIGHT BE GREGORY J. NELSON. SHE SAID
6.	THAT SHE KNEW THAT GREGORY J. NELSON
7.	WAS BUBBA'S REAL NAME.
8.	OFFICER ROGUE KNEW NELSON FROM A
9.	PREVIOUS CONTACT. HE AND OFFICER GRABE
10.	WENT TO 3600 AMERICANA TERRACE #3 AND CONTACTED
11.	NELSON. I WENT TO THE POLICE STATION AND
12.	GET A PHOTOGRAPH OF NELSON AND VANESSA
13.	CONFIRMED FROM THE PHOTO THAT NELSON WAS
14.	ABSOLUTELY THE BUBBA'S SHE KNEW.
15.	OFFICER ROGUE ASKED NELSON TO COME TO
16.	THE STATION IMMEDIATE HE DID. AFTER DET.
17.	FLATEN INTERVIEW NELSON OFFICER CSASKO AND
18.	I BOOKED HIM ON L & L D.R. 403-697 AND 1ST DEG.
19.	KIDNAPPING OR. 403-701.
20.	
21.	

Vehicle Disposition:		Not Involved <input type="checkbox"/>	Left at Scene <input type="checkbox"/>	Removed by: _____
Transported to:		Handcuffed	Checked	Seat Belted
Ada County Jail <input type="checkbox"/> Other <input type="checkbox"/>		Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Suspect Identified by:		Drivers License <input type="checkbox"/>	Military I.D. <input type="checkbox"/>	Verbal <input type="checkbox"/>
		Idaho State I.D. <input type="checkbox"/>	AFIS <input type="checkbox"/>	Other <input type="checkbox"/>

13. Reporting Officer <b>STEVENS</b>	Serial <b>444</b>	Date/Time <b>02-06-94 1:30 PM</b>	14. Supervisor Approving 	Serial	Date/Time <b>11:45</b>
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CONTINUATION PAGE  
☒ MISCELLANEOUS REPORT

☐ ADA COUNTY SHERIFF'S DEPARTMENT

☒ BOISE POLICE DEPARTMENT

1. Incident/Topic <b>KIDNAPPING 1ST DEGREE KORI A. McNEEL</b>		2. Subject/Victim's Name <b>KORI A. McNEEL</b>		3. R.D.	4. D.R. No. <b>403-701</b>
5. Location/Address <b>1904 1/2 KEAR ST. BOISE 83</b>			6. Phone		7. Page <b>1 OF 2</b>
8. Date Occurred	9. Time Occurred	10. Route to		11. <input type="checkbox"/> File for information <input type="checkbox"/> For Hot Sheet Entry <input type="checkbox"/> Extra Patrol	
12. Division					

1.	I RESPONDED TO 1904 KEAR ST.
2.	REVIEWING A POSSIBLE RABE THE VICTIM
3.	IS 10 YEAR OLD FEMALE, WHEN I ARRIVED
4.	ON SCENE KORI'S MOTHER VANESSA AND
5.	CANNONMOTHER TULLA WERE STANDING OUTSIDE THE
6.	HOUSE. KORI WAS INSIDE ON A COUNTRY WITH
7.	DEBBIE CLIFFORD. KORI WAS VISIBLY UPSET AND CRYING.
8.	TULLA AND VANESSA BOTH SAID THAT A
9.	WHITE MALE "BUBBA" HAD PICKED UP KORI AT
10.	APPROX. 08:00 HRS ON 02-06-94. HE TOOK KORI TO
11.	HIS TRAILER AND MADE HER COVER HER HEAD WITH
12.	A PILLOW CASE. TULLA SAID THAT KORI TOLD
13.	HER THAT BUBBA HAD RABED HER.
14.	Sgt. KEVINS AND OFFICER PUGH ARRIVED
15.	ON SCENE. KORI TOLD TULLA AND DEBBIE THAT
16.	BUBBA HAD TOLD HER SHE WOULD GET \$200 FOR CLEANING
17.	HIS TRAILER IF SHE CAME OVER. I THEN HAD THE
18.	PARAMEDICS TRANSPORT KORI TO ST. AL'S WITH DEBBIE
19.	CLIFFORD.
20.	VANESSA SAID SHE <sup>THOUGHT SHE</sup> KNEW WHERE BUBBA LIVED.
21.	I GAVE VANESSA A RIDE OUT FEDERAL WAY TO

Vehicle Disposition:			
Not Involved <input type="checkbox"/>	Left at Scene <input type="checkbox"/>	Removed by: _____	
Transported to:		Handcuffed	Checked
Ada County Jail <input type="checkbox"/>	Other <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Suspect Identified by:		Seat Belted	Door Locked
Drivers License <input type="checkbox"/>	Military I.D. <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Idaho State I.D. <input type="checkbox"/>	AFIS <input type="checkbox"/>	Verbal <input type="checkbox"/>	
		Other <input type="checkbox"/>	

13. Reporting Officer		14. Supervisor Approving	
Serial <b>STEVENS</b>	Date/Time <b>4441 02-06-94 1300HRS.</b>	Serial	Date/Time

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**CONTINUATION PAGE**  
☐ MISCELLANEOUS REPORT

☐ ADA COUNTY SHERIFF'S DEPARTMENT

☒ BOISE POLICE DEPARTMENT

1. Incident/Topic <b>KIDNAPPING 1ST DEGREE</b>		2. Subject/Victim's Name <b>KORE A. McNEIL</b>		3. R.D.	4. D.P. No. <b>403-6</b>
5. Location/Address <b>1904 1/2 KERR AVE SE 83705</b>			6. Phone		7. Page <b>2 OF 2</b>
8. Date Occurred <b>02-06-94</b>	9. Time Occurred	10. Route to	11. <input type="checkbox"/> File for information <input type="checkbox"/> For Hot Sheet Entry <input type="checkbox"/> Extra Patrol		12. Division

1.	THE UNMETED CAMP GROUND. WE TALKED TO
2.	THE MANAGER WHO IDENTIFIED AN EX-TENANT
3.	AS A POSSIBLE SUSPECT. A GREGORY J. NELSON
4.	I ASKED VANESSA IF BURBA'S REAL NAME
5.	MIGHT BE GREGORY J. NELSON. SHE SAID
6.	THAT SHE KNEW THAT GREGORY J. NELSON
7.	WAS BURBA'S REAL NAME.
8.	OFFICER POONE KNEW NELSON FROM A
9.	PREVIOUS CONTACT. HE AND OFFICER GRABE
10.	WENT TO 3600 AMERICANA TERRACE #3 AND UNMETED
11.	NELSON. I WENT TO THE POLICE STATION AND
12.	GET A PHOTOGRAPH OF NELSON AND VANESSA
13.	CONFIRMED FROM THE PHOTO THAT NELSON WAS
14.	ABSOLUTELY THE BURBA'S SHE KNEW.
15.	OFFICER POONE ASKED NELSON TO COME TO
16.	THE STATION IMMEDIATE HE DID. AFTER DET.
17.	FLATEN INTERVIEW. NELSON OFFICER ASKED AND
18.	I BOOKED ON L & L D.R. 403-697 AND 1ST DEG.
19.	KIDNAPPING DR. 403-701.
20.	
21.	

Vehicle Disposition:		Not Involved <input type="checkbox"/>	Left at Scene <input type="checkbox"/>	Removed by: _____
Transported to:		Handcuffed	Checked	Seat Belted
Ada County Jail <input type="checkbox"/>	Other <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>	Y <input type="checkbox"/> N <input type="checkbox"/>
Suspect Identified by:		Drivers License <input type="checkbox"/>	Military I.D. <input type="checkbox"/>	Verbal <input type="checkbox"/>
		Idaho State I.D. <input type="checkbox"/>	AFIS <input type="checkbox"/>	Other <input type="checkbox"/>
13. Reporting Officer <b>STEVENS</b>	Serial <b>444</b>	Date/Time <b>02-06-94 1300 HRS</b>	14. Supervisor Approving 	Serial _____ Date/Time _____

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198  
A.M. 10:14 FILED P.M.

MAR 06 2006

J. DAVID NAVARRO, Clerk  
By *NK* DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Julianne Meehan**  
Deputy Prosecuting Attorney  
200 West Front Street, Room #3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700  
Fax: (208) 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

GREGORY JOSEPH NELSON,

Defendant.

)  
)  
) *CVPC0601180*  
) Case No. ~~HCR 21080~~  
)  
) **AFFIDAVIT OF JULIANNE**  
) **MEEHAN RE:**  
) **DISPOSITION OF**  
) **PROPERTY**

**COMES NOW**, Julianne Meehan, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and files the following affidavit:

1. Your affiant, Julianne Meehan, has been the handling Deputy Prosecutor in case HCR 21080 and subsequent UCPA filings.
2. Questions were raised by the Defendant regarding whether certain items seized by the Boise City Police Department in the above-referenced case were still in the possession of the Prosecutor's Office or the Boise City Police Department. After making inquiries

*RCUD*  
*4/5/06*  
000464 *2*

of both the Ada County Prosecutor's Office and the Boise City Police Department, your affiant was provided with property invoices, disposition sheets and a request for disposition of property. (State's exhibit 1, pages 1-9.)

3. Your affiant believes the two items that the defendant requested be held were a pink/white bath towel, listed as item 9 on State's exhibit 1, page 3 and a small dish towel listed as item 10 on State's exhibit 1, page 4.
4. Your affiant believes, after a review of State's exhibit one, that both the pink/white bath towel and the small dish towel were destroyed pursuant to the request for disposition of property, State's exhibit 1, page 1.

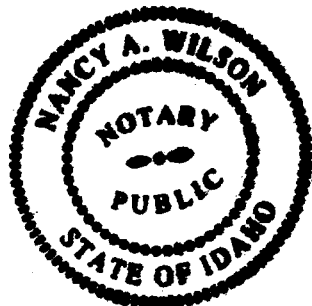
DATED this 1 day of March, 2006.

**GREG H. BOWER**

Ada County Prosecuting Attorney

Julianne Meehan  
By: Julianne Meehan  
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 2nd day of March, 2006.



Nancy A. Wilson  
Notary Public for the State of Idaho  
Residing at Idaho, Idaho  
Commission Expires: December 14, 2011

403-701  
!!!! IMMEDIATE RESPONSE NEEDED !!!!

REQUEST FOR DISPOSITION OF PROPERTY

This case is closed, per Prosecutor's Office, Case #: 0940117

Property will no longer be held, but will be disposed of pursuant to your checked instructions below.

To: Det Flaten Date: 10-30-97

From: M. Schuster (Property Officer)

DR#: 403-701 entered on 2-6-94 by you

is: Misc items left others returned  
etc. Sex assault kit, sexual towel  
ref: Nelson, Gregory J.

Request disposition instructions shown below: \_\_\_\_\_

- ☐ Return to : \_\_\_\_\_ (Name)  
☐ Auction  
☒ Destroy

R. Flaten 10-31-97  
(Officer's Signature) (Date)

Do Not Write Below This Line

RETURN COMPLETED FORM TO PROPERTY/EVIDENCE

STATES  
EXHIBIT

**ADA COUNTY SHERIFF  
BOISE POLICE**

**PROPERTY INVOICE**

1. R.D. <u>14</u>	DR No. <u>1903-7011</u>
2. DATE <u>2-8-94</u>	TIME <u>11650</u>
<input checked="" type="checkbox"/> EVIDENCE	<input type="checkbox"/> FOUND
<input type="checkbox"/> SAFE-KEEPING	<input type="checkbox"/> IMPOUNDED
<input type="checkbox"/> RECOVERED	<input type="checkbox"/>

3. BOOKING OFFICER <u>ELMER/Quilley</u>	SERIAL No. <u>440</u>	4. APPROVED BY	SERIAL No.
--------------------------------------------	-----------------------	----------------	------------

IMPOUNDED CAR										
5. YEAR	6. MAKE	7. BODY	8. LIC. NO.	YEAR	9. STATE	10. VIN NO.				
11. REMOVED FROM					AT		12. BY			TO

13. VEHICLE RECEIVED BY: \_\_\_\_\_  
(Driver of Wrecker or Lot Attendant) SIGNATURE: \_\_\_\_\_

14. REASON ☐ ABANDONED ☐ TRAFFIC HAZARD ☐ DRIVER INCAPACITATED ☐ EVIDENCE

15. Item #	Amount	ITEMIZE AND DESCRIBE PROPERTY FULLY	Item Serial No.	Bin No.
X1	1	Red Pillow w/ Blue Pillow Case		
X2	1	Woolen case on Red Pillow		
X3	1	" " " "		
X4	1	Green Nylon Sleeping Bag		
X5	1	Blue Blanket		
X6	1	Red Blanket		
X7	1	Blue Print Sheet		
X8	1	1 Bottle Baby Oil - MF 03-03-94		
X9	1	PINK WHITE BATH TOWEL		

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT  
SEIZED PER SEARCH WARRANT

x case closed m940117

16. WAIVER BY FINDER: The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property as against the City of Boise nor County of Ada, Idaho. SIGNATURE: \_\_\_\_\_

17. PERSON PROPERTY OBTAINED FROM: \_\_\_\_\_ ADDRESS: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

18. OWNER'S NAME (if known): \_\_\_\_\_ ADDRESS: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

19. OWNER NOTIFIED? ☐ YES ☐ NO ☐ ATTEMPTED

20. STORED AT ☒ PROPERTY ROOM ☐

21. EVIDENCE OUT: 2348 Susan Portley Court 7-31-95  
22. EVIDENCE RETURNED: \_\_\_\_\_

23. OWNER'S SIGNATURE RECEIVING PROPERTY OR VEHICLE: Gene Elam 7/18/95 CRT-USF

24. FINAL DISPOSITION ☐ RETURNED TO OWNER ☐ DESTROYED ☐ RETURNED TO FINDER ☒ TURNED OVER TO P.D. office ☐ SOLD AT AUCTION DATE: \_\_\_\_\_

25. COMMANDER AUTHORIZING DISPOSITION: \_\_\_\_\_ SERIAL NO.: \_\_\_\_\_

26. The records of the Boise Police Department and the Ada County Sheriff's Department find it clear to release the above described vehicle to the person who's signature appears in Block No. 23 of this form. Said person agrees to pay any and all monies required to obtain said vehicle.

SIGNATURE OF OFFICER RELEASING VEHICLE  
—Complete Block No. 23 and Block No. 24—  
Secure Owner's Identification

000167

**ADA COUNTY SHERIFF  
BOISE POLICE**

**PROPERTY INVOICE**

*FH-4/42*

1. R.D. No.	DR No.
<i>14</i>	<i>403-701</i>
2. DATE	TIME
<i>2-6-94</i>	<i>11650</i>
<input checked="" type="checkbox"/> EVIDENCE	<input type="checkbox"/> FOUND
<input type="checkbox"/> SAFE-KEEPING	<input type="checkbox"/> IMPOUNDED
<input type="checkbox"/> RECOVERED	<input type="checkbox"/>

3. BOOKING OFFICER <i>RECTOR/Quilley</i>	SERIAL No. <i>040</i>	4. APPROVED BY	SERIAL No.
---------------------------------------------	--------------------------	----------------	------------

**IMPOUNDED CAR**

5. YEAR	6. MAKE	7. BODY	8. LIC. NO.	YEAR	9. STATE	10. VIN NO.
11. REMOVED FROM			AT		12. BY	

13. VEHICLE RECEIVED BY:  
(Driver of Wrecker or Lot Attendant) SIGNATURE:

14. REASON ☐ ABANDONED ☐ TRAFFIC HAZARD ☐ DRIVER INCAPACITATED ☐ EVIDENCE

15. Item #	Amount	ITEMIZE AND DESCRIBE PROPERTY FULLY	Item Serial No.	Bin No.
<i>10</i>	<i>1</i>	<i>SMALL DISH TOWEL (WHITE)</i>		
		<i>Search Warrant</i>		
<i>11</i>	<i>1</i>	<i>Black Plastic Bag used by CSI Quilley to transport Items 5-6 to the station for packaging</i>		

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT

*#12 - 26470-B Booked into St Lab by B Flaton*

16. WAIVER BY FINDER The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property as against the City of Boise nor County of Ada, Idaho. SIGNATURE:

17. PERSON PROPERTY OBTAINED FROM ADDRESS PHONE NO.

18. OWNER'S NAME (if known) ADDRESS PHONE NO.

19. OWNER NOTIFIED? ☐ YES ☐ NO ☐ ATTEMPTED

20. STORED AT ☒ PROPERTY ROOM

21. EVIDENCE OUT *1012 Susan Hartley Court 7-31-95*

22. EVIDENCE RETURNED *#10 8-25-95 MS*

23. OWNER'S SIGNATURE RECEIVING PROPERTY OR VEHICLE

24. FINAL DISPOSITION *#10*  
☐ RETURNED TO OWNER ☒ DESTROYED  
☐ RETURNED TO FINDER ☐ TURNED OVER TO  
☐ SOLD AT AUCTION DATE: *11-3-97*

25. COMMANDER AUTHORIZING DISPOSITION SERIAL NO. *2699*

The records of the Boise Police Department and the Ada County Sheriff's Department find it clear to release the above described vehicle to the person w. s's signature appears in Block No. 23 of this form. Said person agrees to pay any and all monies required to obtain said vehicle.

SIGNATURE OF OFFICER RELEASING VEHICLE  
—Complete Block No. 23 and Block No. 24—  
Secure Owner's Identification

ADA COUNTY SHERIFF  
BOISE POLICE

PROPERTY INVOICE

F421122/F437/42

GT-3 7520/21 E 7441/42

R.D. 27 DR No. 403-697

2. DATE 2/6/94 TIME 1:57 PM - 1:20 PM

☒ EVIDENCE ☐ FOUND  
☐ SAFE-KEEPING ☐ IMPOUNDED  
☐ RECOVERED ☐

3. BOOKING OFFICER  
STEVENS / CSAJCU

SERIAL No.  
444/484

4. APPROVED BY

SERIAL No.  
375

IMPOUNDED CAR

5. YEAR 6. MAKE 7. BODY 8. LIC NO. YEAR 9. STATE 10. VIN NO.

11. REMOVED FROM AT 12. BY TO

13. VEHICLE RECEIVED BY:

(Driver of Wrecker or Lot Attendant) SIGNATURE:

14. REASON ☐ ABANDONED ☐ TRAFFIC HAZARD ☐ DRIVER INCAPACITATED ☒ EVIDENCE

15. Item # Amount ITEMIZE AND DESCRIBE PROPERTY FULLY Item Serial No. Bin No.

SEXUAL ASSAULT KIT

Clear for release  
of 1/8/95  
@ 1240 hrs  
all available  
info  
1-2-8-15-75  
E-Team

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT

BY NANCY DRAKE AT ST ALPHONSUS RE: LEWD  
AND LASCIVIOUS KIDNAPPING 2ND DEGREE.

16. WAIVER BY FINDER The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property as against the City of Boise nor County of Ada, Idaho.

SIGNATURE:

17. PERSON PROPERTY OBTAINED FROM ADDRESS PHONE NO.

18. OWNER'S NAME (if known) ADDRESS PHONE NO.

19. OWNER NOTIFIED?  
☐ YES ☐ NO ☐ ATTEMPTED

20. STORED AT  
☒ PROPERTY ROOM ☐

21. EVIDENCE OUT

24. FINAL DISPOSITION

☐ RETURNED TO OWNER ☐ DESTROYED  
☐ RETURNED TO FINDER ☒ TURNED OVER TO court  
☐ SOLD AT AUCTION DATE:

22. EVIDENCE RETURNED

23. OWNER'S SIGNATURE RECEIVING PROPERTY OR VEHICLE

25. COMMANDER AUTHORIZING DISPOSITION

SERIAL NO.

The records of the Boise Police Department and the Ada County Sheriff's Department find it clear to release the above described vehicle to the person who's signature appears in Block No. 23 of this form. Said person agrees to pay any and all monies required to obtain said vehicle.

SIGNATURE OF OFFICER RELEASING VEHICLE  
—Complete Block No. 23 and Block No. 24—  
Secure Owner's Identification

RECEIVED  
JUN 21 2012  
Ada County Clerk

Gregory J. Nelson  
26.201/MSI, B-87  
P.O. Box 5/  
Boise, ID 83707-0051

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_  
FILED \_\_\_\_\_  
P.M. \_\_\_\_\_  
145

JUN 21 2012

CHRISTOPHER D. RICH, Clerk  
By JOANNA ORTEGA  
DEPUTY

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and for the County of Ada

Gregory J. Nelson,  
Petitioner,  
vs.  
State of Idaho,  
Respondent.

Case No. CV-PC-2011-02496  
Verified Response To  
Answer To Petition For The  
Performance Of Forensic  
Deoxyribonucleic Acid (DNA)  
Testing

Now Comes the Petitioner, above-named, and hereby  
files his verified Response to the State's answer to  
Petition for the Performance of Forensic Deoxyribonucleic  
acid (DNA) Testing, as follows:

1. said answer was received by Petitioner the  
afternoon of June 18, 2012, as is evidenced by the  
attached envelope in which Petitioner received it;  
there are 2 date stamps: 1) "Received Jun 01" from  
IC/O (where it was sent, Orofino), and 2) "Jun 18 REC'D"  
from the South Base Mailroom Complex. The envelope  
also contains Petitioner's initials the date he received  
it: "RCVD 6/18/12 GN".
  2. answering paragraph, or, rather, responding to paragraph  
one (1) page 1 of said answer, Petitioner confirms it.
  3. Responding to paragraph 2 on pp. 1-2 of the said  
answer, Petitioner confirms it, but disputes the type/method  
of DNA testing required was ~~not~~ done as Petitioner  
requested/wanted to be done, for lack of consultation  
and communication by counsel, and counsel's non-  
compliance with Petitioner's directive for DNA testing, e.g., toothpicks.
- Verified Response - 1

4. Responding to paragraph 3 of said answer, Petitioner confirms it, but, ~~disputes~~<sup>disputes</sup> the amount of DNA produced upon quantification of the items DNA tested ("0.03 ng," from "1/2 of each" of 6 swabs, vaginal (accuser was virgin and Dr. Karsing testified she did not push swabs into the accuser's vaginal or rectum); "0.12 ng," from "1/2 of each" of 6 swabs, anal) do not support the elements of the charged offenses for any suspect, nor does it support the accusations made by the accuser (many inconsistencies) or statements the accuser made to others on February 6, 1994 (many inconsistencies).

5. Responding to paragraph 4 of said answer, page 2, Petitioner confirms State Exhibit 2, the Rape Kit, and State Exhibit 6, the underwear, were admitted into evidence (Rape kit admitted the morning of August 18, 1995) at trial, and, further, confirms, upon information, the underwear was maintained in the custody of the Ada County Court clerk's office, released for DNA testing, and returned, but, disputes DNA testing was done on the underwear. Petitioner disputes, upon information, ~~own~~<sup>own</sup> belief, and evidence, that the Rape Kit that was admitted into evidence at trial is ~~not~~<sup>not</sup> the ~~Rape Kit~~<sup>Rape Kit</sup> sent for DNA testing, and returned. If it is, as it is asserted in the said answer, then, the Rape Kit was tampered with prior to trial and/or there was perjured testimony and falsified documents about it, also before trial. See Petitioner's affidavit, and supplemental motion, both dated June 18, 2012.

6. Responding to paragraph 5 of the said answer, Petitioner confirms State Exhibit 6, the underwear, has the potential, through DNA testing, to provide evidence on the issue of identity at trial, as Petitioner has no evidence, at this time, that the underwear was tampered with. Due to the evidence reflected in the Forensic Biology Report dated June 28, 2011, and the Laboratory notes, page 22, as compared to the trial testimony, Petitioner now disputes the rape kit has the potential,

Verified Response - 2



through DNA testing, to provide evidence on the issue of identity; the June 28, 2011 Report, and the page 22 of the laboratory notes, indicate that Q13 of the rape kit contains two wooden toothpicks from fingernail scrapings. The April 7, 1994 inventory of the rape kit to Q13, and the August, 1995 trial testimony to Q13 of the rape kit, both indicate Q13 contains genital swabbings. So, until an evidentiary hearing is held on the status of the rape kit, it has no potential, through DNA testing, to provide evidence on the issue of identity at trial. Should this Court find that it is the same Rape Kit as admitted into evidence at trial, then, the Rape Kit was tampered with before trial; in this event, Petitioner would be entitled to a favorable inference from it, at trial, or the charges dismissed.

7. Responding to paragraph 6 of the said answer, page 2, Petitioner disputes that DNA testing was completed "as requested by Petitioner"; a) states Exhibit b, the underwear, was not DNA tested as requested in the Petition. b) The DNA amounts produced upon quantification, "0.03 ng" and "0.12 ng", is inconsistent with any direct contact, for any suspect, but, is consistent with indirect contact, which is not a criminal offense for any suspect. By comparison, "1/3 of 1 swab" (Coral) Petitioner volunteered produced "1,274.48 ng" (1.27448 micrograms) of Y-DNA. c). Petitioner disputes the terminology "excluded as a donor" used in the answer: i) there was NO Y-DNA profile generated from the "sperm fraction" of the DNA testing; ii) due to the minute amounts, 0.03 ng ("ng" = nanogram) and 0.12 ng (a "nanogram" is one-billionth of a gram), the terminology used by the lab, combined with the fact of NO DNA profile from the sperm fraction, was "source", not donor; the "source" could not have been from direct contact, especially the direct contact required for sexual activity. d) It takes a match between 10 of the highly variable DNA profile regions, known as "loci", or, the position on a chromosome, for the FBI to conclude that the evidence DNA tested and the DNA from a suspect might be one and the same. (Source: National Geographic Magazine, Sept. 2010, page 53, right-hand column, third full column). The FBI match 10 criteria is not met in this case for a conclusion to any suspect.

Verified Response - 3

- e). Please see previous responses, for a further response.
- f.) The partial DNA profiles generated cannot exclude 1 out of every 131, and 1 out of every 132, Native Americans. Petitioner is not a native American, but, has blue eyes, and is of, primarily, Swedish, Scottish, and Norwegian, decent, with some English and French, as well, in the ancestral file.
- g). Unique to the 0.03 ng from the vaginal swabs, were inconclusive results for additional male sources of DNA - the Idaho State Police chose the ~~wrong~~ wrong Y-DNA amplification kits. The correct kits were: PowerPlex 21P combined with the Mini Filer, in light of the minute quantity and supposed age (18 years +) of the rope hit.
- h). The Y-DNA testing produced anomalous results and represents a mathematical paradox; the increase, or, decrease, in the amounts of Y-DNA cannot be mathematically reconciled, relative to the Y-DNA profile generation; if it's the same DNA, from the same period in history, tested the same, preserved the same, tested the same, then, it should have produced results consistent with that; it did not. DNA testing is based upon real science and results consistent with that can be expected. Since it was not, the conclusion flowing therefrom indicates the source of the DNA came from multiple persons and/or from differing historical time frames.

Therefore, Petitioner respectfully requests that the Petition be granted.

Respectfully submitted on this 19<sup>th</sup> day of June, 2012

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner

### Verification

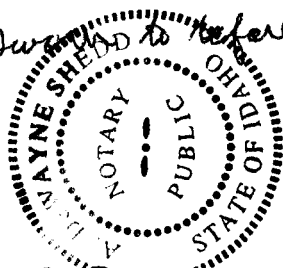
State of Idaho }  
County of Ada }

Gregory J. Nelson, after first being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Verified Response; that I know the contents thereof; and that the matters therein set forth are true.

Gregory J. Nelson  
Gregory J. Nelson - Petitioner

Subscribed and sworn to before me on this 19<sup>th</sup> day of June, 2012

SEAL



Wayne Shedd  
Notary Public for Idaho  
Residing at: Boise  
My Commission Expires: 11/06/12

Verified Response - 4

Certificate of service

I hereby certify that on this 19<sup>th</sup> day of June, 2012, I caused to be served/ filed Verified Response to answer to Petition for the Performance of Forensic Deoxyribonucleic acid (DNA) Testing, U.S. Mail, first class postage, via the /MS/ Prison legal mail system and addressed to each of the following:

Julianne Meehan  
Deputy Prosecuting attorney  
200 W. Front Street, Room 319/ copy  
Boise, Idaho 83702

Christopher D. Rich  
Clerk of the District Court  
Ada County Courthouse  
200 W. Front St.  
Boise, Idaho 83702

Gregory J. Nelson  
Gregory J. Nelson

Verified Response - 5

June 18, 2012

From: Nelson, 26.201, D-87  
TO: DeWayne Stedd, IMSI Paralegal  
Re: Nelson v. Stedd, Notary / copies.

DeWayne:

One notary, page 4,  
number of documents: 1  
Number of copies: 2  
Total copies: ~~2~~ 12

I thank you in advance... the document  
is in a manila envelope. There is an  
envelope for the document, as incorporated therein.  
Please, staple envelope to the document  
before mailing. Thank you

once again, I thank you in advance

Respectfully,  
Gregory J. Nelson

P.S. - The envelope to be stapled to the document,  
is dated with multiple dates: May 29, 2012 (postmark),  
Jun 1 (1010); June 18 (Mailroom); 6/18/12 RCVD gm-me.

Thanks, again

gm  
000175



ADA COUNTY  
PROSECUTING ATTORNEY

GREG H. BOWER

200 W. Front Street, Rm 3191  
Boise, Idaho 83702

B

Gregory Nelson  
26201, ICI-0  
381 W. Hospital Drive  
Orofino, ID 83544

PLEASE NOTIFY THE SENDER OF  
YOUR COMPLETE AND CORRECT  
MAILING ADDRESS.

DTXPSMF 83544

RECEIVED JUN 01

RED  
6/18/12  
SM

0001

000176

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Julianne Meehan**  
Idaho State Bar No. 3313  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

NO. \_\_\_\_\_ FILED P.M. 2:55  
A.M. \_\_\_\_\_

**JUN 27 2012**

**CHRISTOPHER D. RICH**, Clerk  
By **TARA THERRIEN**  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

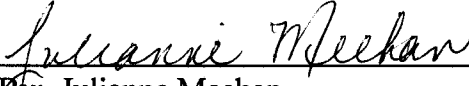
Case No. CV-PC-2011-0002496

**MOTION TO AMEND THE  
ORDER REGARDING  
SEALING, TRANSPORTATION  
AND DNA TESTING**

**COMES NOW**, Julianne Meehan, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and hereby moves this Court to amend the previously signed order regarding sealing, transportation and DNA testing of trial evidence in CR-FE-0000-0021080 to allow for the proper return of the DNA evidence. A copy of the proposed Amended Order is attached to this Motion.

**DATED** this 27 day of June 2012.

**GREG H. BOWER**  
Ada County Prosecuting Attorney

  
By: Julianne Meehan  
Deputy Prosecuting Attorney

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of June 2012, I served a true and correct copy of the foregoing Motion for Summary Dismissal, Exhibits 1, ~~1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~ (submitted under seal) to :

Theresa Martin  
380 S. 4<sup>th</sup> St., Ste. 101  
Boise, ID 83702

✓ By depositing copies of the same in the United States mail, postage prepaid, first class.

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 2:55

**JUN 27 2012**

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**CHRISTOPHER D. RICH**, Clerk  
By **TARA THERRIEN**  
DEPUTY

**Julianne Meehan**  
Idaho State Bar No. 3313  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY NELSON,	)	
	)	
Petitioner,	)	<b>Case No. CV-PC-2011-0002496</b>
	)	
vs.	)	<b>MOTION FOR SUMMARY</b>
	)	<b>DISMISSAL</b>
STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

**COMES NOW**, Julianne Meehan, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and hereby moves this Court for a summary dismissal of Nelson's petition for post-conviction relief pursuant to Idaho Code § 19-4906(c) for the following reasons:

1. The Petitioner requested in his petition that certain items that were admitted during the jury trial in CRFE000021080 be tested for the existence of DNA evidence. DNA testing was not possible during the investigation and trial.
2. Petitioner in his petition asserted that DNA testing had the potential to result in evidence that would show that it was more probable than not that the petitioner was innocent.
3. The Respondent through stipulation with the petitioner had the requested items delivered to the Idaho State Forensic Laboratory for DNA testing. The Idaho State Laboratory

π



arranged for the testing to be completed at a private certified laboratory because Idaho's laboratory was unable to do the required type of DNA testing.

4. In April 2012, both the Respondent and Petitioner were provided a copy of the Sorenson Forensics laboratory's report which documents the testing and results of the DNA testing that they performed on certain trial exhibits at the request of the Idaho Forensic Laboratory. (A copy of this report marked as State's Exhibit 1 is incorporated into this motion).
5. The first of two conclusions stated in the Forensic Case report from the testing of the vaginal swabs is that the petitioner cannot be excluded as the source of the male DNA identified on the anal swabs. (See State's Exhibit 1). The second conclusion stated in the Forensic Case Report is that from the testing of the anal swabs the petitioner cannot be excluded as the source of the male DNA found on the anal swabs.
6. The findings documented in the Forensic Case report as exactly the opposite that the petitioner put forth in his petition. The petitioner in his petition put forth the proposition that the results of the DNA testing would show that it was more probable than not that the petition was innocent. Instead, the result of the DNA testing includes the petitioner as a source of the male DNA found on both the vaginal and anal swabs.

### **ANALYSIS**

A petitioner for post-conviction relief has the burden of proving, by preponderance of the evidence, the allegations on which his claims are based. Idaho Code §19-4906 authorizes disposition of a petition for post conviction relief pursuant to a motion of a party. Idaho Code §19-4906(c) provides as follows:

The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Summary dismissal is permitted only when the petitioner's evidence raises no issue of material fact, which, if resolved in his favor, would entitle him to the requested relief. If such a factual issue is presented, an evidentiary hearing must be conducted. Gonzales v. State, 120

Idaho 759, 763, 819 P.2d 1159, 1163 (Ct. App. 1991); Hoover v. State, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct. App. 1988); Ramirez v. State, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct. App. 1987). A careful review of Nelson's petition and the Forensic Case report (See State's Exhibit 1) demonstrate that he has not created a factual issue material to the Court's decision.

Thus, the question on summary disposition is whether the application, affidavit and other evidence supporting the application allege facts which, if true, would entitle the applicant to relief. Berg v. State, 131 Idaho 517, 960 P.2d 738, 740 (1998). Martinez v. State, 126 Idaho 813, 816, 892 P.2d 488, 492 (Ct. App. 1995). In other words, the application must present, or be accompanied by admissible evidence supporting the allegations, or the application must be deemed subject to dismissal. Therefore, the Court may summarily dismiss Nelson's petition if the Court is satisfied he is not entitled to the relief requested. The Court is not required to accept his conclusory allegations unsupported by admissible evidence, or accept his conclusions of law. Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994); Baruth v. Gardner, 110 Idaho 156, 159, 715 P.2d 369, 372 (Ct. App. 1986). Moreover, The Court is not required to accept a petitioner's claims as true where the record clearly demonstrates the facts are otherwise. Allegations are insufficient for the granting of relief when they are clearly disproved by the record or do not justify relief as a matter of law. Cooper v. state, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975); Cootz v. State, 129 Idaho 360, 368, 924 P.2d 622, 630 (Ct. App. 1996); "If the record conclusively disproves an essential element of a post-conviction claim" or if the petitioner's allegations fail as a matter of law, summary dismissal is appropriate. McKay v. State, 148 Idaho 567, 225 P.3d 700 (2010); Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007); Stuart v. State, 118 Idaho 865, 869, 801 P.2d 1216, 1220 (1990).

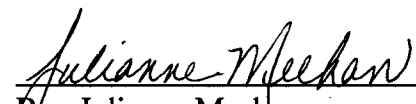
### **CONCLUSION**

A summary dismissal is permitted when the petitioner's evidence raises no issue of material fact, which, if resolved in his favor, would entitle him to the requested relief. If such a factual issue is not presented, then an evidentiary hearing need not be conducted. Gonzales v. State, 120 Idaho 759, 763, 819 P.2d 1159, 1163 (Ct. App. 1991); Hoover v. State, 114 Idaho 145, 146, 754 P.2d 458, 459 (Ct. App. 1988); Ramirez v. State, 113 Idaho 87, 89, 741 P.2d 374, 376 (Ct. App. 1987). The Petitioner has failed to meet its burden of proving the allegations

upon which his claims are based by the standard of preponderance of the evidence. Therefore, pursuant to Idaho Code §19-4906 the Respondent respectfully requests that the Court enter a summary dismissal of the petition for post conviction relief.

**DATED** this 27 day of June 2012.

**GREG H. BOWER**  
Ada County Prosecuting Attorney

  
By: Julianne Meehan  
Deputy Prosecuting Attorney

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27 day of June 2012, I served a true and correct copy of the foregoing Motion for Summary Dismissal, Exhibits 1, ~~2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~ (submitted under seal) to :

Theresa Martin  
380 S. 4<sup>th</sup> St., Ste. 101  
Boise, ID 83702

 By depositing copies of the same in the United States mail, postage prepaid, first class.

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Julianne Meehan**  
Idaho State Bar No. 3313  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

NO. \_\_\_\_\_ FILED P.M. 2:55  
A.M. \_\_\_\_\_

**JUN 27 2012**

**CHRISTOPHER D. RICH**, Clerk  
By **TARA THERRIEN**  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-0002496

**MOTION TO TAKE JUDICIAL  
NOTICE**

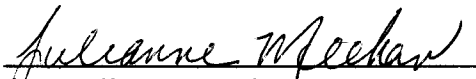
**COMES NOW**, Julianne Meehan, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and requests the court take judicial notice of the following exhibits, transcripts, affidavits, pleadings and records from the court file in CR-FE-0000-00021080. The Respondent makes this request pursuant to Idaho Rule of Evidence 201(d) regarding the following:

1. Trial Transcript of Trial
2. Court Minutes

3. Judgment of Conviction for Kidnapping in the First Degree and Lewd and Lascivious Conduct

DATED this 27 day of June 2012.


**GREG H. BOWER**  
Ada County Prosecuting Attorney

  
By: Julianne Meehan  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27<sup>th</sup> day of June 2012, I served a true and correct copy of the foregoing Motion to take Judicial Notice to :

Theresa Martin  
380 S. 4<sup>th</sup> St., Ste. 101  
Boise, ID 83702

 By depositing copies of the same in the United States mail, postage prepaid, first class.

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 2:55

JUN 27 2012

CHRISTOPHER D. RICH, Clerk  
By TARA THERRIEN  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Julianne Meehan**  
Idaho State Bar No. 3313  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-0002496

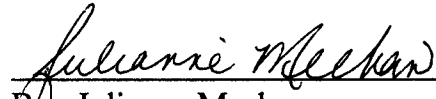
**MOTION TO SEAL  
RESPONDENT'S EXHIBIT #1  
UNDER IDAHO  
ADMINISTRATIVE RULE  
32(h)**

**COMES NOW**, Julianne Meehan, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and moves this court for an order sealing the Respondent's Exhibit #1, Forensic Case Report, referred to in the Respondent's Motion for Summary Disposition in the above captioned case for the following reasons:

1. The documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person

RESPECTFULLY requested this 27 day of June 2012.

**GREG H. BOWER**  
Ada County Prosecuting Attorney

  
By: Julianne Meehan  
Deputy Prosecuting Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27<sup>th</sup> day of June 2012, I served a true and correct copy of the foregoing Motion to ~~take~~ Seal Judicial Notice to :

Theresa Martin  
380 S. 4<sup>th</sup> St., Ste. 101  
Boise, ID 83702

☒ By depositing copies of the same in the United States mail, postage prepaid, first class.

Norton  
Janine  
7-3-12  
DL

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JUL 02 2012

Ada County Clerk

Gregory J. Nelson

26.201, IMSI, 8-87

P.O. Box 51

Boise, Idaho 83707-0051

NO  
A.M. FILED P.M. 1209

JUL 02 2012

CHRISTOPHER D. RICH, Clerk  
By CHRISTINE SWEET  
DEPUTY

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and for the County of Ada

Gregory J. Nelson,  
Petitioner,

vs.

State of Idaho,  
Respondent

Case No. CV-PC-2011-02496

Supplement to Supplemental Motion For  
Post-Conviction Relief - I.C. Section  
19-4901 et seq.; Rule 57,  
Idaho Criminal Rules

Now Comes the Petitioner, Gregory J. Nelson, and hereby  
supplements the Supplemental Motion For Post-Conviction Relief -  
I.C. Section 19-4901 et seq.; Rule 57, Idaho Criminal Rules,  
dated and served on the 18<sup>th</sup> day of June, 2012, as follows:  
The petitioner further alleges:

1. The facts and allegations set forth in the said Supplemental  
Motion, dated June 18, 2012, are hereby incorporated by this  
reference thereto.
2. Petitioner was transported before the Court, the Honorable  
Lynn D. Norton, District Judge, on June 28, 2012, for the  
above-entitled case. During a hearing on this date, Adressa A. Martin,  
attorney at law, provided Petitioner with a copy of the long-awaited  
Forensic Biology Report dated June 28, 2011, referenced in  
Petitioner's affidavit of June 18, 2012, the Supplemental Motion  
dated June 18, 2012, and the Discharge Notice, For Cause,  
dated June 5, 2012, attached to the Certified Notice of Discharge  
For Cause Re: Representation By Adressa A. Martin, attorney at law,  
dated June 6, 2012.

Supplement to Supplemental Motion - 1



3. as soon as copy service is available to this Petitioner, Petitioner will have copied the Forensic Biology Report dated June 28, 2011, and submit the same to this Court for filing.
4. No copy service is available for the instant document, and Petitioner had to hand-copy it for timely-filing and service upon Ms. Meelan.
5. The Forensic Biology Report dated June 28, 2011 does state that Q13 contains toothpicks, contrary to the April 7, 1994 inventory and 1995 testimony at trial, as to Q13 containing "genital swabbings"; "G) A glue-sealed white special evidence envelope containing two wooden toothpicks (Item # Q13-403280025 YB)."
6. The quoted labels between the Forensic Biology Report dated June 28, 2011 (the Report) and the April 7, 1994 Rape Kit inventory are not consistent: the Report: "26470" and "Q3-403280025 YB"; April 7, 1994 inventory: "... labeled, 'Sexual Assault Evidence Kit, State of Idaho Bureau of Forensic Services, Patient Xori McNeil, Date/Time of Exam: 2-6-94 1200 noon ...'....".
7. There appears to be inconsistencies between the Report and the April 7, 1994 Rape Kit inventory to: Q7; Q5; Q9; Q8; Q4; Q16; Q14; Q10; Q12; and Q6, Petitioner is not sure as to the Report, e.g. Q4.
8. The Report to Q11 states: "H) A glue-sealed white envelope said to contain 'moist genital swabs' (Item # Q11-403280025 YB)." The April 7, 1994 inventory to Q11 states: "Q11 8.) a white envelope labelled 'Step 2- Pubic Hair Combing...' I marked this Q11-403280025 YB and initialed and dated it." Pet. aff., 6/18/12, Pet. Ex. 1, p. 3. (The Report (of 6/28/11) states that the items listed on it "were opened for the purpose of inventorying the contents only"). The lab notes from Sorenson Forensics, p. 22 (Pet. aff., 6/18/12, Pet. Ex. 1) states to Q11: "... a white envelope, gum seal ~~marked~~ unmarked, M: 'Q11... pubic hair combings...' ...". The trial testimony to Q11, Frederick Whitehurst, states: "This is marked 'Pubic hair combings'. It's a Q11 item and it's marked with my initials." Trial Tr., p. 681, ls. 4-6, S.C. No. 22666. Nurse Debi Drohe testified she did the Q11 pubic hair combings, AND moist genital swabs. Pet. aff., Ex. 1, p. 556, ls. 13-16. Supplement to Supplemental Motion - 2

8. Frederick Whitehurst's testimony does not reflect any 'moist genital swabs' for Q11, or, for any envelope of the Rape Kit.
9. The April 7, 1994 inventory, Pet. aff., 6/18/12, Pet. Ex. 1, pp. 1-11, does not reflect any 'moist genital swabs' for any container of the Rape Kit.
10. The April 7, 1994 inventory of the Rape Kit to the Q11 Pubic Hair Combing, further states: "Contacted Ann Madley who advised that if DNA analysis was possible on hair, to conduct that analysis. no hair on comb." Pet. aff., 6/18/12, Pet. Ex. 1, p. 5.
11. The Report of June 28, 2011 to Q15 of the Rape Kit states: "N) an unused white pubic hair standards envelope (Item #Q15-403280025 YB)."
12. The April 7, 1994 inventory of the Rape Kit to Q15 states: "Q15 12.) a white envelope labelled 'step 3 - Pubic Hair Standards'. I marked this Q15-403280025 YB and initialed and dated it. Envelope sealed." Pet. aff., 6/18/12, Pet. Ex. 1, p. 3.
13. Nurse Debi Drake's trial indicates that she used the Q15 envelope of the Rape Kit: "... 'Pubic hair standards not on patient', and I did that." Pet. aff., 6/18/12, Pet. Ex. 1, p. 555, ls. 19-20.
14. Frederick Whitehurst's trial testimony to Q15 of the Rape Kit differs from Nurse Drake's, in that he did not read from the envelope that the pubic hair standards "not on patient". He: "an item I marked 'Q15' which is 'Pubic hair standards,' and my initials are on it." Pet. aff., 6/18/12, Pet. Ex. 1, pp. 679-80, ls. 24-25; 1. The April 7, 1994 inventory does not reflect a quotation from Q15 that the Pubic Hair Standards were "not on patient".

## II.

states Exhibit 6, the underwear, was tampered with / destroyed / altered and / or tested without disclosing the test results to the Petitioner and / or there was perjured testimony / subornation to perjury, and a failure to disclose, falsified documents about it and / or a failure to disclose it upon testimony at trial, and the same was concealed to avoid detection of it, and to prevent the Petitioner and others from the discovery of it, and to prevent the Petitioner from filing a legal claim / action about it to obtain relief from it; e.g. Rule 38(c), Idaho Court Administrative Rules; Article I, Section 13 to the Idaho Constitution; the Fifth, sixth, and Fourteenth amendments to the United States Constitution.

15. The Forensic Biology Report, dated June 28, 2011 (the Report) containing an inventory of States Exhibit 6, and States Exhibit 2 (the underwear, and, Rape Kit, respectively), was withheld from Petitioner until June 28, 2012. Petitioner received the Report from Theresa A. Martin, attorney at law, on June 28, 2012 during a Court hearing of the above-entitled case.

16. The Report of June 28, 2011 to States Exhibit 6, the underwear, also, Q1, states in relevant part: ".... a tape-sealed plastic zip bag labeled '26470-A (1 of 2)' and 'Q1-403280025 YB', containing a tape-sealed brown paper bag labeled '26470-A (2 of 2) Kori McNeil underpants', containing a pair of white 'sprockets' size 4 panties with pink trim and animal print with an approximately 2.5" x 1.5" portion missing from the interior crotch; and a plastic zip bag labeled 'cutting from Q140328002', containing an approximately 2.5" x 1" piece of white animal print fabric."

17. The April 7, 1994 inventory of States Exhibit 6, the underwear, also, Q1, states to Q1: "Q1. Brown paper bag marked 'Kori McNeil underpants 2-6-94 by Det Drake RN...' received in a zip lock bag sealed with heavy tape. Initialed and marked. Tape sealed with evidence."

17.5. The Report of 6/28/11 and the 4/7/94 inventory to Q1 do not match.

Supplement to Supplemental Motion - 4

18. The April 7, 1994 inventory, has a Testing section. The testing section to Q1 on April 13, 1994 to Q1 states: "Before soaking Q1 totally in hexane I smelled Q1 panties to determine if I could detect the fragrance. I detected the fragrance very slightly, but definitely". There is no indication, in this document, that Q1, the states Exhibit 6, the underwear ("panties") were cut for the testing, but the entire panties, as a whole, were tested there.

19. The April 7, 1994 / April 13, 1994 testing section and with other dates, has no inventory, reference, or testing, to the "cutting from Q1" reflected in the Report of 6/28/11.

20. Petitioner has reviewed the testimony of Frederick Whitehurst and there is no indication that he made a cutting to Q1.

~~21.~~ Petitioner was unaware of a cutting to Q1, or, from Q1, until Petitioner received, and read, the Forensic Biology Report dated June 28, 2011. But for the non-disclosure, Petitioner would have filed/received relief.

Wherefore, this Court should grant the appropriate relief, including, but, not limited to, Petitioner's release from the custody of the Idaho State Board of Corrections.

Respectfully submitted on this 28<sup>th</sup> day of June, 2012.

Gregory J. Nelson  
Gregory J. Nelson - Petitioner

State of Idaho )  
County of Ada ) ss:

I, Gregory J. Nelson, after first being duly sworn upon my oath, depose, say, and declare, under the penalty of perjury pursuant to 28 U.S.C. Section 1746, that I have subscribed to the foregoing Supplement 20 Supplemental Motion For Post-Conviction Relief, that I know the contents thereof; and that the matters and allegations therein set forth are true to the best of knowledge and belief.

Notary  
Not Available

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner

Supplement 20 Supplemental Motion - 5

## Certificate of Service

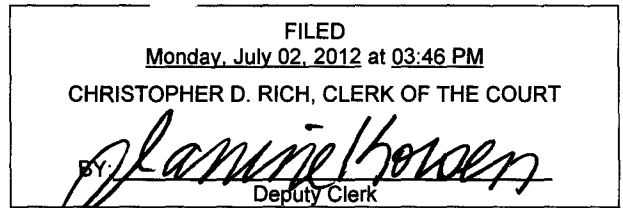
I hereby certify that on this 28<sup>th</sup> day of June, 2012, I caused to be served/mailed a true and correct copy, and original as set forth below, by U.S. Mail, first class postage prepaid, of the above and foregoing of Supplement to Supplemental Motion for Post-Conviction Relief, via the /MSI prison mail system and addressed to each of the following:

Julianne Meehan  
Deputy Ada County Prosecutor  
200 W. Front St., Room 3191  
Boise, Idaho 83702

Christopher D. Rich  
Clerk of the District Court  
Ada County Courthouse  
200 W. Front St.  
Boise, Idaho 83702

Gregory J. Nelson  
Gregory J. Nelson

Supplement to Supplemental Motion - 6



**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY JOSEPH NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-02496

ORDER TO TRANSPORT

It appearing that the above-named Petitioner is in the custody of the Idaho Department of Corrections, and that it is necessary that **GREGORY JOSEPH NELSON** be brought before this Court for **MOTION ON THURSDAY, JULY 05, 2012 AT 11:00 AM.**

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho Department of Corrections release the said Petitioner to the Ada County Sheriff for the purpose of the aforementioned appearance and retake **GREGORY JOSEPH NELSON** into

ORDER TO TRANSPORT

W

custody from the Sheriff upon **GREGORY JOSEPH NELSON** return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: Monday, July 02, 2012

A handwritten signature in black ink, appearing to read "Lynn G. Norton", written in a cursive style.

---

LYNN G NORTON  
District Judge

ORDER TO TRANSPORT

## CERTIFICATE OF MAILING

I hereby certify that on MONDAY, JULY 02, 2012, I mailed (served) a true and correct copy of the within instrument to:

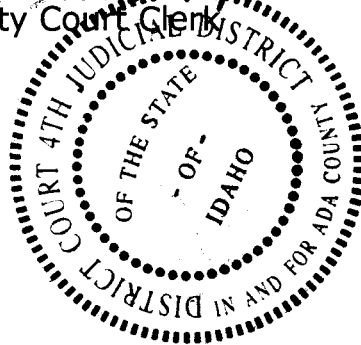
Department of Corrections  
Faxed

Ada County Jail  
Faxed

CHRISTOPHER D. RICH  
Clerk of the District Court

By: 

Deputy Court Clerk





**JUL 06 2012**

**CHRISTOPHER D. RICH, Clerk**  
By **JANINE KORSEN**  
DEPUTY

**GREG H. BOWER**  
Ada County Prosecuting Attorney

**Julianne Meehan**  
Idaho State Bar No. 3313  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise Idaho 83702  
Telephone: (208) 287-7700


IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY NELSON,	)	
	)	<b>Case No. CV-PC-2011-0002496</b>
Petitioner,	)	
vs.	)	<b>ORDER TO SEAL EXHIBIT #1 OF</b>
	)	<b>THE RESPONDENT'S MOTION FOR</b>
STATE OF IDAHO,	)	<b>SUMMARY DISMISSAL</b>
	)	
Respondent,	)	
	)	
	)	

**PURSUANT TO** the motion having come before this Court;

**IT IS SO ORDERED** that Exhibit #1 attached to the Respondent's Motion for Summary Dismissal may be filed under seal.

**DATED** this 5<sup>th</sup> day of July 2012.

  
District Judge

**ORDER TO SEAL EXHIBIT #1 OF THE RESPONDENT'S MOTION FOR  
SUMMARY DISMISSAL (NELSON), Page 1**

000196

*W* CC: PA, S°

JUL 06 2012

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

GREGORY NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-2496

ORDERS ON VARIOUS MOTIONS FILED  
JUNE 2012 AND AMENDED  
SCHEDULING ORDER

Currently before this Court is Petitioner's application for performance of DNA testing filed February 3, 2011. Beginning in June 2012, the Petitioner began filing a multitude of documents although he is represented by counsel. Counsel was appointed on March 3, 2011 (the Ada County Public Defender's Office), then Joseph Ellsworth appeared on April 14, 2011, and a notice of substitution of counsel was filed by Theresa Martin on August 3, 2011 as conflict counsel for the Public Defender's Office. These matters came before the court for hearing on July 5, 2012 with Ms. Martin appearing for Mr. Nelson who is in custody, and Ms. Meehan appearing on behalf of the Respondent.

**A. Petitioner's Notice of Discharge for Cause of Theresa Martin filed June 12, 2012; Petitioner's Motion to Review Attorney's Representation Status filed June 21, 2012; and Petitioner's Motion to Continue June 28, 2012 Hearing filed June 21, 2012**

The Petitioner filed a "Certified Notice of Discharge For Cause RE: Representation by Theresa A. Martin, Attorney of Law" as well as a "Motion to Review Attorney's Representation Statues" both filed on June 12, 2012. The Petitioner also filed a "Motion to Continue June 28, 2012 Hearing" the same day. At the hearing on June 28, 2012, this court by bench order set over the matters until July 5, 2012 since copies of the matters filed had not been given to counsel. Mr. Nelson stated at this hearing that there had been a lack of communication with Ms. Martin that has been exacerbated by the fact that he can only call out of the institution four times per month.

It was clarified that Mr. Nelson had repeatedly requested the inventory of items sent for DNS testing, which he had referred to as the forensic report. That inventory document from 2011 is different from the Forensic Case Report dated March 2012 which is the DNA testing. Mr. Nelson stated he has since received the inventory document and the Forensic Case Report in his Supplement to Supplemental Motion filed July 2, 2012. Although his "Certified Notice" alleged that Ms. Martin was too busy to be competent, Mr. Nelson stated he did not know about Ms. Martin's level of competency because he had not communicated with her about that. He stated he does want to challenge the DNA testing which opportunity will be provided in these proceedings. Ms. Martin stated on the record that she does have adequate time to assist Mr. Nelson with the Petitioner's Response to the State's Motion for Summary Dismissal as it related to the Petition for DNA Testing, which is the only matter before this court in this proceeding. Given counsel's representation that she will assist Mr. Nelson in responding to the Motion for Summary Dismissal, that a scheduling order for the Summary Dismissal has not yet been entered, and that Mr. Nelson's concerns with lack of communication does not do not at this stage of this proceeding present good cause for appointment of substitute counsel by the Court. The court DENIES Mr. Nelson's request to substitute counsel pursuant to Idaho Code § 19-856.

**B. Petitioner's Motion to Dismiss Criminal Charges, Rule 48(a)(s), Idaho Criminal Rule filed June 21, 2012**

A petition for post-conviction relief is an entirely new proceeding and is civil in nature. It is distinct from the criminal action which led to conviction. *Stuart v. State*, 136 Idaho 490, 494, 36 P.3d 1278, 1282 (2001); *Peltier v. State*, 119 Idaho 454, 456, 808 P.2d 373, 375 (1991). Idaho Criminal Rule 57(b) states post-conviction cases are processed under the Idaho Rules of Civil Procedure except as otherwise ordered by the trial court. A Motion to Dismiss underlying criminal charges is not an appropriate filing in this case so the Motion to Dismiss is stricken upon the court's own initiative pursuant to Idaho Rule of Civil Procedure 12(f). Relief will be considered by the court pursuant to Idaho Code § 19-4902(f) at the appropriate stage of this proceeding.

**C. Petitioner's Verified Response to Answer to Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing and Affidavit of Gregory Nelson filed June 21, 2012**

Pursuant to the Idaho Rules of Civil Procedure, a response to an answer is not an appropriate responsive pleading pursuant to the Idaho Rules of Civil Procedure. However, since

Idaho Code § 19-4906 requires the court to take into account the substance regardless of defects of form of the pleadings, the Court will consider the Verified Response to Answer to Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing and the Affidavit of Gregory Nelson with attachments filed on June 21, 2012 as a response to the Respondent's Motion for Summary Dismissal if counsel desires the court to consider those matters. Petitioner's Counsel is asked to identify whether she wants the court to consider any of these matters as the or with the Response to Respondent's Motion for Summary Dismissal. The substance of those filings will be addressed in the Order on Summary Dismissal.

**D. Petitioner Supplemental Motion for Post-Conviction Relief – I.C. section 19-4901 et seq; Rule 57, Idaho Criminal Rule filed June 21, 2012 and Petitioner Supplement to Supplemental Motion for Post-Conviction Relief – I.C. section 19-4901 et seq; Rule 57, Idaho Criminal Rule filed July 2, 2012**

Related to the Petitioner's desire to file a copy of the forensic report, a March 2012 report has been filed with the court by the Respondent as an exhibit to its Motion for Summary Dismissal so a duplicate filing by the Petitioner is not required. If he was referring to the 2011 inventory of items testing, exhibits and affidavits in response to the Motion for Summary Dismissal can be filed according to the scheduling order below.

Related to supplemental claims of tampering with the rape kit and underwear which were tested, the court does not grant leave to amend the petition. These are new allegations and do not related back to the March 3, 2011 filing date of the petition. Pursuant to Idaho Code § 19-4902(c)(2), *the Petitioner* has the burden of presenting a prima facie case that the evidence to be tested had been subject to a chain of custody sufficient to establish that such evidence had not been substituted, tampered with, replaced or altered in any material aspect.

Since the court is not to elevate form over substance and the motions were filed without the assistance of counsel, the Supplemental Motions are converted to Motions for Leave to Amend the Petition and are DENIED. If these matters are alleged in the response to the Respondent's Motion for Summary Dismissal, the court will address whether they create an issue of material fact for the court's consideration in its ruling after that hearing.

**E. Respondent's Motion to Amend the Order Related to Sealing, Transporting and DNA Testing filed June 27, 2012**

This matter is reserved for a future hearing.

**F. Respondent's Motion to Take Judicial Notice filed June 27, 2012**

At the hearing, the Respondent amended the request just to a request for the court to take judicial notice of the Judgment of Conviction. The court will take judicial notice of the Judgment Conviction. The Respondent withdrew the request as to the trial transcript and the court minutes. Other exhibits used in support of motions before the court should be submitted as exhibits or specific portions of the documents to be judicially noticed should be identified consistent with the instructions on exhibits in this Court's Scheduling Order filed in this matter on April 27, 2012.

**G. Respondent's Motion for Summary Dismissal filed June 27, 2012**

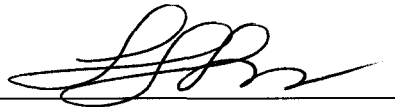
Since the proceedings in this matter were delayed for the court to consider the matters recently filed by Mr. Nelson, the Scheduling Order filed April 27, 2012 is amended to allow an opportunity for Mr. Nelson to obtain the assistance of counsel in responding to the Respondent's Motion.

The Petitioner has until August 6, 2012 to serve opposing affidavit(s) and a response brief for the Motion for Summary Dismissal. The Respondent has until August 20, 2012 to serve a reply brief.

A hearing on the Motion for Summary Dismissal is set for September 6, 2012 at 11 a.m. and the Petitioner will be transported for that hearing.

**Any objection to this amended scheduling order must be filed and served within FOURTEEN (14) DAYS from the date this order is filed. Any objecting party must notice a scheduling conference for hearing in Ada county. Failure to timely object will waive any objection to this amended scheduling order.**

Dated this 5<sup>th</sup> day of July, 2012.

  
\_\_\_\_\_  
Lynn G. Norton  
District Judge

## CERTIFICATE OF MAILING

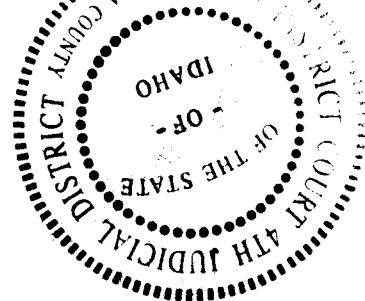
I hereby certify that on this 18th day of July, 2012, I mailed (served) a true and correct copy of the within instrument to:

JULIANNE MEEHAN  
DEPUTY PROSECUTING ATTORNEY  
INTERDEPARTMENTAL MAIL

THERESA A MARTIN  
ATTORNEY AT LAW  
1693 S SPRING VALLEY LN STE 200  
MERIDIAN ID 83642

CHRISTOPHER D. RICH  
Clerk of the District Court

By: *Danine Hansen*  
Deputy Court Clerk



RECEIVED

JUL 06 2012

Ada County Clerk

Gregory J. Nelson  
26.201, 1MS1, B87  
P.O. Box 51  
Boon, Idaho 83707-0051

NO. 140  
A.M. 11:40 P.M.

JUL 06 2012

CHRISTOPHER D. RICH, Clerk  
By JAMIE RANDALL  
DEPUTY

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and for the County of Ada

Gregory J. Nelson,  
Petitioner,

vs.  
State of Idaho,  
Respondent.

Case No. CUPC-2011-02496

Motion To Strike

Now comes the Petitioner, Gregory J. Nelson,  
and hereby moves this Court for its Order  
whereby striking from the record the Forensic  
Case Report, referred to in the Respondent's Motion  
for Summary Disposition, and any other future, or  
past, or current, documents that make reference to,  
directly or indirectly, any alleged and uncharged  
conduct, or any documents not provided to Petitioner at the time of filing.

This Motion is made upon the affidavit  
of Gregory J. Nelson. Said affidavit is attached  
hereto and incorporated by reference herein.

Wherefore, this Court should find good  
cause to grant the instant motion and  
enter the appropriate requested order.

Respectfully submitted on this 2nd day  
of July, 2012.

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner

Motion To Strike - 1

Affidavit of Gregory J. Nelson

State of Idaho)

ss:

County of Ada )

Gregory J. Nelson, after first being duly sworn upon his oath, deposes and says:

1. I am the Petitioner of the above-entitled case.
2. I am making this Affidavit upon personal knowledge.
3. The information is true and correct, and I am competent to testify to the information contained herein.
4. Respondent seeks to seal Exhibit 1, the Forensic Case Report, because it "contains highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person". I was provided with said Motion to seal on June 28, 2012 in open court; however, I was not provided with a copy of the referenced Forensic Case Report at that time. I am, therefore, unable to determine if it is the same Forensic Case Report I was provided with, by mail, on April 23, 2012 from Theresa C. Martin.
5. Insofar as the Forensic Case Report is the same as the Forensic Case Report I received on April 23, 2012, I find said Forensic Case Report highly objectionable, and request that it be stricken from the record, primarily because the "offense:..." stated in the upper-right section of that Forensic Case Report reflects criminal conduct I have never been charged with. I have had enough problems dealing with the false accusations as they stand, without having to deal with this additional infection of an additional inflammatory nature. Moreover, in the past, I filed Public Records Requests with the Idaho State Police (circa 2007) seeking copies of test results, e.g. 26470 B, Item #12, as part of my investigation into the testing facts of the collateral criminal case in HCR 21080, the excuse I was



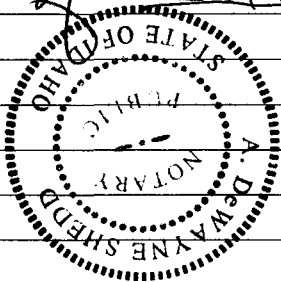
provided, for the destruction of the documents I filed for, was, essentially, that it was not an offense as stated on the Forensic Case Report dated March 30, 2012 and was, therefore, subject to the Idaho State Forensic Lab's ~~Retention~~ Retention schedule, subject to destruction after 10 years. (Please see, Motion to Quash Subpoena Duces Tecum, Nelson v. State, CV-PC-0705642). When, on April 23, 2012, I found out that the same Idaho State Police that destroyed all of the documents I was seeking, because my case was not an alleged offense as stated on the 3/30/12 Forensic Case Report, used that same, alleged, uncharged offense in communications with Sonesson Forensics, the lab that did DNA testing in this case, resulting in that same alleged uncharged offense appearing on the Forensic Case Report the ~~Respondent~~ Respondent now wishes to file under seal with this court. Therefore, I respectfully request that the Forensic Case Report be stricken from the record, and any other future, or past, or current documents that make reference to, directly, or indirectly, any alleged and uncharged conduct, or any documents not provided to me at the time of filing.

Respectfully dated this 3rd day of July, 2012

Gregory J. Nelson  
Gregory J. Nelson  
Affiant

Subscribed and sworn to before me on  
this 3 day of July, 2012

SEAL



A. DeWayne Shedd  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
My Commission Expires: 11/06/13

## Certificate of service

I hereby certify that on this 3rd day of July, 2012, I caused to be served/ filed a true and correct copy, and original as set forth below, of the above and foregoing of Motion to Strike, via the MSJ Prison legal mail system and addressed to each of the following:

Julianne Meehan  
Deputy Prosecuting Attorney  
200 W. Front St., Room 3191 copy  
Boise, Idaho 83702

Christopher D. Reich  
Clerk of the District Court  
Ada County Courthouse  
200 W. Front St.,  
Boise, Idaho 83702

Gregory J. Nelson  
Gregory J. Nelson

Motion to Strike - 4

Norton  
Jain  
7-9-12

RECEIVED  
06 2012  
Ada County Clerk

Gregory J. Nelson  
26.201, 1MS1, B-85  
P.O. Box 51  
Boise, ID 83707-0051

NO. 11.57 FILED  
A.M. 11.57 P.M.

JUL 06 2012

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and for the County of Ada

Gregory J. Nelson,  
Petitioner,  
vs.  
State of Idaho,  
Respondent.

Case no. CVPC-2011-02496

Certified Notice of Lodging Re:  
Forensic Biology Report  
Dated June 28, 2011

State of Idaho,  
Plaintiff,  
vs.  
Gregory Joseph Nelson,  
Defendant.

Case no. HCR 21080

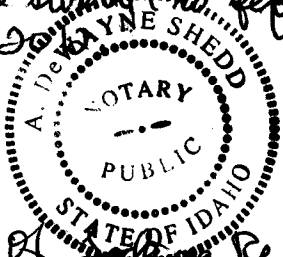
State of Idaho)  
(ss:  
County of Ada)

Notice is hereby given that: Petitioner/Defendant,  
Gregory J. Nelson, hereby files a true, exact, correct copy  
of the Forensic Biology Report dated June 28, 2011,  
as received by Gregory J. Nelson on the 28th day  
of June, 2012 from Theresa A. Martin,  
attorney at law, and the same is attached hereto  
and incorporated by reference herein.  
Respectfully submitted on this 2nd day of July, 2012.

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner/Defendant

subscribed and sworn to before me on the 2  
day of July, 2012.

SEAL



A. Delwyn Shedd  
Notary Public for Idaho  
Residing at:  
My Commission Expires: 11/06/13

Certified Notice of Lodging Re: Forensic Biology Report, 6/28/11

000206

Certificate of service

I hereby certify, that on this 2nd day of July, 2012, I caused to be served Certified Notice of Lodging Re: Forensic Biology Report Dated June 28, 2011, by U.S. Mail, First Class Postage Prepaid, via the IMSI Prison legal mail system and addressed to each of the following:

Julianne Meehan  
Deputy Prosecuting Attorney  
200 W. Front St., Room 3191 copy  
Boise, Idaho 83702

Christopher D. Rieth  
Clerk of the District Court  
Ada County Courthouse  
200 W. Front St.  
Boise, Idaho 83702 original

Gregory J. Nelson  
Gregory J. Nelson

Certified Notice of Lodging Re: Forensic Biology Report, 6/28/11

07/27/2011 15:26 FAX 287 7719

Ada Cty Prosecutor Civil

0002/0003

208-884-7197

11:04:01 a.m. 07-21-2011

2/3

IDAHO STATE POLICE  
FORENSIC SERVICES  
Headquarters Laboratory  
700 S. Stratford Drive, Suite 125  
Meridian, Idaho 83642-6202  
Telephone: (208) 884-7170  
Fax: (208) 884-7197

**FORENSIC BIOLOGY REPORT**

Case Agency: Boise Police Department	Agency Case No.: 1994-403697	Laboratory Case No.: M20111071 (X-Ref. 26470)
Suspect(s): Gregory Joseph Nelson	Date of Offense: February 6, 1994	Report Date: June 28, 2011
Victim(s): Kory McNeil	Investigating Officer: Amy Morgan	Analyst: Cynthia Cunningham

**Results and Interpretations**

The items listed below were opened for the purpose of inventorying the contents only. No examinations were conducted on any of these items.

**Disposition of Evidence**

All items have been returned to the main laboratory evidence vault for return to the submitting agency.

**Evidence Description**

The following items were received in the laboratory from Sean O'Conner (Ada County Prosecutor's Office), on April 28, 2011:

- Item 1 A tape-sealed sexual assault evidence collection kit labeled "26470" and "Q3-403280025 YB", said to have been collected from Kori McNeil, and containing the following items:
- A) A cardboard swab box containing 6 vaginal swabs with approximately ¾ missing from one (Item #Q7-403280025 YB).
  - B) A paper swab wrapper containing 6 "external genitalia" swabs with approximately ½ missing from one (Item #Q5-403280025 YB).
  - C) A cardboard swab box containing 6 rectal swabs with approximately ½ missing from one (Item #Q9-403280025 YB).
  - D) A cardboard swab box containing 4 oral swabs with approximately ½ missing from one (Item #Q8-403280025 YB).
  - E) A small brown paper bag with the bottom cut open, containing two pieces of off-white tissue said to have "wiped external genitalia" (Item #Q4-403280025 YB).
  - F) A tape-sealed plastic zip bag containing a piece of off-white tissue, said to be a "cutting from Q4 40328002".
  - G) A glue-sealed white special evidence envelope containing two wooden toothpicks (Item #Q13-403280025 YB).
  - H) A glue-sealed white envelope said to contain "moist genital swabs" (Item #Q11-403280025 YB).
  - I) A glue-sealed white envelope said to contain "pulled head hair" (Item #Q16-403280025 YB).
  - J) A glue-sealed white envelope said to contain a "saliva sample" (Item #Q14-403280025 YB).

RCVD  
6/28/2012  
9M  
000208

07/27/2011 15:27 FAX 287 7719

Ada Cty Prosecutor Civil

0003/0003

208-884-7197

11:04:44 a.m. 07-21-2011

3/3

LABORATORY NO.: M20111071

X-Ref.: 26470

REPORT DATE: June 28, 2011

Evidence Description Continued

- K) A tape-sealed manila coin envelope labeled "cuttings of swabs & tissue & their extracts", containing 5 empty 1.5ul microcentrifuge tubes labeled "tissue", "oral", "external genitalia", "anal", "vag", and 5 0.5ul parafilm-sealed microcentrifuge tubes labeled the same and each containing a substrate cutting (Item #Q10-403280025 YB).
  - L) A plastic slide holder containing a microscope slide labeled "tissue wipe ext gen" (Item #Q12-403280025 YB).
  - M) A plastic slide holder containing 5 microscope slides labeled "vag", "oral", "anal", "26470 vag anal", and "26470 oral swab ext gen" (Item #Q6-403280025 YB).
  - N) An unused white pubic hair standards envelope (Item #Q15-403280025 YB).
- Item 2 A tape-sealed plastic zip bag labeled "26470-A (1 of 2)" and "Q1-403280025 YB", containing a tape-sealed brown paper bag labeled "26470-A (2 of 2) Kori McNeil underpants", containing a pair of white 'Sprockets' size 4 panties with pink trim and animal print with an approximately 2.5" x 1.5" portion missing from the interior crotch; and a plastic zip bag labeled "cutting from Q1 40328002", containing an approximately 2.5" x 1" piece of white animal print fabric.

The following item was received in the laboratory from Jennifer Delaney (BPD), on May 3, 2011:

- Item 3 A tape-sealed manila envelope, with Boise PD property invoice attached, containing two cardboard swab boxes, each with two reference oral swabs said to have been collected from Gregory Joseph Nelson.

This report does or may contain opinions and/or interpretations, of the undersigned analyst, based on scientific data. The analyst's signature certifies that all of the above are true and accurate.

  
Cynthia R. Cunningham

Forensic Scientist IV/Biology Supervisor 44

Norton  
JAN. 12  
7/11/2012  
CW

JUL 11 2012

CHRISTOPHER D. RICH, Clerk  
By CHARLOTTE WATSON  
DEPUTY

Gregory J. Nelson  
26.201, 1MS1, B-87  
P.O. Box 51  
Boise, ID 83707-0051

In the District Court of the Fourth Judicial District  
of the State of Idaho, San and For the County of Ada

Gregory J. Nelson,  
Petitioner,  
vs.  
State of Idaho,  
Respondent.

Case No. CU-PC-2011-02496  
Motion to Strike Amended Order  
Based on Stipulation Regarding  
Sealing, Transportation and DNA  
Testing of Trial Evidence in  
CR-FE-0000-0021080

Now comes the Petitioner, above-named, and hereby moves  
this Honorable Court for its order whereby striking from the  
record the amended order based on stipulation regarding  
sealing, transportation and DNA testing of trial  
evidence in CR-FE-0000-0021080, based upon  
the following: No motion to amend received by Petitioner.

Respondent requests the April 22, 2011 order  
be amended to reflect two new paragraphs,  
6 and 7. The Respondent's request to amend the  
order, over 14 months after it was entered, is  
not appropriate, and should be stricken from the  
Record, forthwith; as well as the April 22, 2011 order.

1. Paragraph 6: "all items picked up to be tested from  
ada County clerk's office will be returned to the  
ada County clerk's office at the conclusion of the  
DNA testing."
2. Respondent's answer to Petition for the Performance  
of Forensic Deoxyribonucleic Acid (DNA) Testing,  
filed on the 29<sup>th</sup> day of May, 2012, page 2, paragraph  
4, indicates/admits said items were [already] returned  
to the custody of the ada County clerk's office. However,  
at the July 5, 2012 hearing before the court, ~~was~~ Respondent was  
contrary to Respondent's answer. Respondent asserted that  
said items were in a locker at the Prosecutor's office,  
which is it?

Motion To Strike - 1

3. Paragraph 7: "Let the DNA sample taken from Gregory Nelson by Boise ~~Police~~ City Police Detective Morgan be returned to Boise City Police Department property at the conclusion of the DNA testing."

4. as the Attached Boise Police Department Supplemental Report of Detective Amy Morgan reflects, the DNA sample was not "taken from Gregory Nelson by Boise City Police Detective Morgan", but, "was voluntarily supplying his DNA by way of oral swabs, and Petitioner signed and Detective Morgan 'read out loud' the DNA Consent Form to [Petitioner Nelson]".

5. The DNA sample Petitioner voluntarily supplied to Detective Morgan was not part of the written stipulation filed on April 22, 2011, and there was no order appointing Counsel in this case, limiting the scope of representation to the DNA testing, and there was no order, at all, appointing Counsel in this case. Therefore, the stipulation filed on April 22, 2011, and the Order based on that stipulation, also filed on April 22, 2011 does not apply, nor is it binding upon the Petitioner.<sup>1</sup>

Wherefore, the amended Order, and the Order of April 22, 2011, should be stricken from the Record, forthwith.

Oral argument is hereby requested.

Respectfully, submitted on this 9<sup>th</sup> day of July, 2012,

<sup>1</sup> Petitioner filed this case pro se, formally on Feb. 3, 2011. A notice of substitution of Counsel (Martin

for Gregory Nelson) was

not filed until August 3, 2011, almost 4 months after the April 22, 2011 Order was filed. Rule 11(b)(1)(2), I.R.C.P.; I.C. sections 3-202; 3-203; 3-204.

Gregory J. Nelson  
Gregory J. Nelson  
Petitioner



## Certificate of service

I hereby certify that on this 9<sup>th</sup> day of July, 2012, I caused to be served/ filed a true and correct copy, and original as set forth below, of above and foregoing of motion to strike by U.S. Mail, First class postage prepaid, via the (MS) prison legal mail system, and addressed to each of the following:

Julianne Meehan  
Deputy Prosecutor  
200 W. Front St., Room 319/  
Boise Idaho 83702

Christopher D. Rich  
Clerk of the District Court  
Ada County Courthouse  
200 W. Front St.,  
Boise, Idaho 83702

~~Gregory J. Nelson~~  
Gregory J. Nelson

Motion To Strike - 3

# [SE POLICE DEPARTMEN SUPPLEMENTAL REPORT

1. Incident/Topic <b>Lewd Conduct w/Minor child / Kidnapping</b>		2. Subject/Victim's Name <b>(s) Nelson, Gregory Joseph</b>		3. RD	4. DR No <b>1994-403697</b>
5. Address <b>3600 Americana #13 Boise, Ada County, Idaho</b>			6. Phone		7. Page <b>2 of 3</b>
8. Date Occurred <b>02/06/1994</b>	9. Time Occurred <b>0800-1024 hrs</b>	10. Route To <b>Deputy Prosecutory J. Meehan</b>		12. Division <b>CID / SPECIAL VICTIMS UNIT</b>	

## ASSIGNMENT:

I am currently assigned as a Detective in the Special Victims Unit of the Boise Police Department, located in the Criminal Investigation Division. I have been involved in Law Enforcement since May 1994 and have been a Boise Police Officer since December 7<sup>th</sup>, 1998. I currently hold an Advanced Certificate through POST and have over 3000 hours of training with over 1800 hours of specialized training in crime scene investigation and reconstruction, child abuse, domestic battery, sexual abuse, and interview and interrogation. In March of 2006 I became a Detective in the Special Victims Unit. As a Detective in this unit my duties include investigating physical and sexual abuse of children, sexual abuse of adults, attempted strangulation cases, domestic violence, crime scene investigations / reconstructions, and interviewing and interrogating persons of interest, including suspect(s), and victim(s).

On 04/19/2011 at 1230 hours I was contacted by Detective Sgt. Higby who requested that I respond to the Idaho State Correctional Institution located at 13400 S. Pleasant Valley Way, Kuna Idaho. Detective Sgt. Higby advised that I was to meet with the defendant, identified as Gregory Joseph Nelson, in order to obtain his DNA by way of oral swabs. I was further informed that Nelson was voluntarily supplying his DNA by way of oral swabs.

On 04/19/2011 at 1250 hours I contacted the Idaho State Correctional Institution (ISCI) and verified Nelson's location. I was advised that Nelson was being housed at ISCI in unit 8. I was further informed to respond to the "Visitor's Section" and they would bring Nelson out to me so that I could obtain the oral swabs.

I arrived at ISCI at 1345 hours, however due to a "lock-down" situation, Nelson was unable to meet with me until 1430 hours at which time I obtained the oral swabs, listed on the attached Property Invoice Form. This meeting was recorded. Due to Nelson being in custody I read out loud the DNA Consent Form to him. Nelson confirmed that he had requested that this be done through a motion filed with the Judge. I explained to Nelson that I was going to do 2 swaps and then repeat the process so that the Prosecution and the Defense would both have the ability to do their testing. Nelson informed me that there was specific evidence that he requested be tested and that should be heading to the state lab. Nelson advised that IDOC did a swab in 1999-2000 and sent it to the Idaho State Lab. Nelson stated that he requested the DNA print from that but was informed that the test had not been done.

After meeting with Nelson and obtaining the swabs, I transported them to the Boise Police Department Crime Lab where they were secured in refrigerator 5 as evidence and completed a State Lab Analysis Form, see attached.

Reporting Officer / Serial / Date/Time  <b>Detective A. Morgan                      # 568</b>		Supervisor Approving / Serial / Date/Time  <b>Detective Sgt. K. Higby              # 479</b>	
-----------------------------------------------------------------------------------------------------	--	----------------------------------------------------------------------------------------------------	--

**DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis**

000213

7/19/12 JUL 18 2012

SK Ada County Clerk

Gregory J. Nelson  
26.201, IMSI, B-87  
P.O. Box 51  
Boise, Idaho 83707-0051

A.M. 10:33 FILED P.M.

JUL 18 2012

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

In the District Court of the Fourth Judicial District  
of the State of Idaho, In and For the County of ada

Gregory J. Nelson,  
Petitioner,

vs,  
State of Idaho,  
Respondent.

Case No. CV-PC-2011-02496

Petitioner's First Affidavit  
In Opposition to Respondent's  
Motion For Summary Dismissal

State of Idaho )  
( ss:  
County of ada )

Gregory J. Nelson, after first being duly sworn  
upon his oath, deposes and says:

1. I am the Petitioner of the above-entitled action and cause.
2. I am making this affidavit upon personal knowledge and information provided to me.
3. The information contained herein is true and correct.
4. I am competent to testify to the information I am providing herein.
5. I am providing the information contained herein as my first affidavit opposing Respondent's Motion

Petitioner's First affidavit In Opposition - 1

(w)

for summary Dismissal, dated June 27, 2012, signed by Ms. Meehan on that date.

6. according to the Court Minutes of April 26, 2012<sup>1</sup> of the above-captioned case, a copy of which is attached hereto, the Honorable Lynn D. Norton reviewed the file and inquired about the DNA testing. The "state attorney", Julianne Meehan, advised she "has the DNA results and they are the Defendants'." ... I find this to be not well-taken.
7. at the July 5, 2012 hearing before Her Honor, I reconfirmed in open Court that I objected to the Y STR DNA testing because I believed the results would be, "inconclusive." What I wrote to Theresa is, "... since we're paying for it, I want a full CODIS STR." Subsequently, Cynthia Cunningham advised my matter not to pay the \$3,000 for the DNA testing, and that, "more comprehensive DNA tests were going to be done." Obviously, that did not happen.
8. A DNA expert is being consulted: "I am a qualified forensic DNA analyst and DNA Technical Leader." The following question was asked of this DNA expert: "How many Y DNA loci profile matches out of 16 would be consistent with a conclusion to a particular person or suspect? (The FBI needs a match of 10 out of 16 to conclude that evidence DNA tested and that of a suspect are one and the same. Source: National Geographic Magazine, Sept. 2010 issue, page 53, right-hand column, third full sentence.)" The DNA expert's response states in relevant part: "... the statement in the National Geographic is not accurate. It does not pertain to Y DNA profiles, even though the gist of the article is about Y DNA. Even with today's Y STR DNA technology, it's not possible to attribute a particular person to a complete 16 out of 16 Y DNA loci match. ... Statistically, even with a complete match, about 99.97% of the male population can be excluded as the source or about 1 in 3300 males could be included as a potential source of the Y DNA profile."
9. as the Y DNA loci profile grid from Sorenson Forensics reflects, the Y DNA loci profile generation rate for the vaginal swabs was 25%, or 4 out of 16 Y DNA loci profiles; the Y DNA loci profile generation

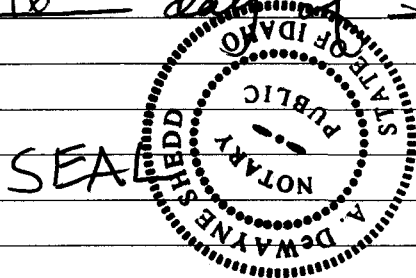
IMSI - INDIGENT PAPER Petitioner's First affidavit in opposition - 2

<sup>1</sup> RCVD on July 5, 2012, after the hearing before the Court that date.

- rate for the anal swabs was 50%, or 8 out of 16 Y DNA profiles. The generation rate for the reference swab was 100%, or 16 out of 16 Y DNA profiles, for the loci chosen to be tested for.
10. The Y DNA upon quantification of  $\frac{1}{2}$  each of 6 swabs, "vaginal" and "anal", is, as follows: Vaginal: "0.03ng" total Y DNA. Y DNA concentration amount: "0.00121 ng/ $\mu$ L" (the symbol, " $\mu$ L" means, microliter) or 1.21 picograms a microliter ("ng" means, nanogram; a nanogram is one billionth of a gram. a picogram is one trillionth of a gram. a microliter is one millionth of a liter.) "0.03ng" can also be expressed as 30 picograms. Anal: "0.12ng" total Y DNA, or, 120 picograms. Y DNA concentration amount: "0.00439 ng/ $\mu$ L" or 4.39 picograms a microliter.
11. The " $\frac{1}{3}$  of 1" oral swab upon quantification is, as follows: "1,274.48 ng" of Y DNA total, and can also be expressed as, 1,274,480 picograms (one million, two-hundred seventy-four thousand, four-hundred and eighty picograms), and can also be expressed as 1.27448 micrograms (a microgram is one millionth of a gram). The Y DNA concentration amount: "7.12 ng/ $\mu$ L", or 7,120 picograms a microliter, for  $\frac{1}{3}$  of 1 oral swab.
- Respectfully dated on this 16<sup>th</sup> day of July, 2012

Gregory J. Nelson  
Gregory J. Nelson  
Affiant

Subscribed and sworn to before me on  
this 16<sup>th</sup> day of July, 2012.



A. DeWayne Shedd  
Notary Public for Idaho  
Residing at: Boise  
My Commission Expires: 11/06/13

## Certificate of service

I hereby certify that on this 16<sup>th</sup> day of July, 2012, I caused to be served/feted a true and correct copy, and original as set forth below, of the above and foregoing of Petitioner's First Affidavit In Opposition to Respondent's Motion For Summary Dismissal, by placing the same, U.S. Mail, first class postage prepaid, via the IMSI prison legal mail system and addressed to each of the following:

Aberose A. Martin  
attorney at law  
380 S. 4<sup>th</sup> St., ste. 101  
Boise, Idaho 83702

copy

Julianne Meekun  
Deputy Ada County Prosecutor  
200 W. Front St., Room 3191  
Boise, Idaho 83702

copy

Christopher D. Rich  
Clerk of the District Court  
ada County Courthouse  
200 W. Front St.  
Boise, Idaho 83702

original

Gregory J. Nelson  
Gregory J. Nelson

			Greg Nelson v. St of Idaho CVPC11-2496	Review Hearing
11:35:17 AM				
11:35:20 AM	Defendant		is not present, in custody.	
11:35:28 AM	State Attorney - Julianne Meehan			
11:35:33 AM	Personal Attorney - Theresa Martin			
11:35:38 AM	Judge Norton		reviews the file and inquires as to the DNA testing.	
11:36:23 AM	State Attorney -		responds.	
11:36:43 AM	Judge Norton		comments.	
11:36:45 AM	State Attorney -		advises she has the DNA results and they are the Defendant's.	
11:37:22 AM	Judge Norton		advises she needs to file a judgment.	
11:37:32 AM	State Attorney -		comments.	
11:37:45 AM	Judge Norton		comments and inquires if she wants to talk to her client first.	
11:38:05 AM	Personal Attorney -		does want to talk to her client first before a judgment is entered.	
11:38:38 AM	Judge Norton		comments further and will set a deadline for dispositive motions in this case and will grant 30 days to file a Motion to Dismiss, and the Defendant can respond within 14 days, and the State can file a Reply Brief within 7 days of that.	
11:39:44 AM	Judge Norton		continues the matter to June 28 at 11:00 for a hearing on dispositive motions.	
11:40:35 AM	State Attorney -		inquires if there will be testimony then.	
11:40:43 AM	Judge Norton		advises no, it's only on dispositive motions, and the Ct will enter a scheduling order to that effect.	
11:41:13 AM	Judge Norton		advises the Defendant will be transported for that hearing.	

BY:   
Deputy Clerk

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY JOSEPH NELSON,

Petitioner,

VS.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-02496

ORDER TO TRANSPORT

It appearing that the above-named Petitioner is in the custody of the Idaho Department of Corrections, and that it is necessary that **GREGORY JOSEPH NELSON** be brought before this Court for **MOTION ON THURSDAY, SEPTEMBER 06, 2012 AT 11:00 AM.**

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho Department of Corrections release the said Petitioner to the Ada County Sheriff for the purpose of the aforementioned appearance and retake **GREGORY JOSEPH NELSON** into

ORDER TO TRANSPORT



custody from the Sheriff upon **GREGORY JOSEPH NELSON** return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: Wednesday, August 08, 2012

A handwritten signature in black ink, appearing to read "Lynn G. Norton", written over a horizontal line.

LYNN G NORTON  
District Judge

ORDER TO TRANSPORT

## CERTIFICATE OF MAILING

I hereby certify that on WEDNESDAY, AUGUST 08, 2012, I mailed  
(served) a true and correct copy of the within instrument to:

Department of Corrections  
Faxed

Ada County Jail  
Faxed

CHRISTOPHER D. RICH  
Clerk of the District Court

By:   
Deputy Court Clerk



Norton  
June  
8-10-12  
a

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ 139

AUG 09 2012

CHRISTOPHER D. RICH, Clerk  
By KATHY BIEHL  
Deputy

**THERESA A. MARTIN**  
The Law Office of Theresa A. Martin  
Conflict Counsel for Ada County Public Defender  
380 S. 4<sup>th</sup> St. Ste. 101  
Boise, Idaho 83702  
Telephone: (208) 336-9401  
Facsimile: (208) 342-3077  
I.S.B. No. 7781

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY NELSON,	)	
	)	Case No.: CV PC 2011 2496
Petitioner,	)	
vs.	)	
	)	<b>MOTION TO EXTEND TIME</b>
STATE OF IDAHO,	)	
	)	
<u>Respondent.</u>	)	

COMES NOW GREGORY NELSON, by and through his conflict counsel of record, Theresa A. Martin, and hereby requests an extension of the time for filing a response to the Motion for Summary Dismissal in the above-entitled case. This motion is brought based on the following circumstances:


Petitioner has been consulting with an expert in the area of DNA testing. The expert is currently reviewing the testing that was performed in this case and will provide

ks

an update once he has assessed the information provided to him by Petitioner. Therefore, additional time is needed for conflict counsel to obtain information regarding the competency of the DNA testing performed in this case.

Petitioner is therefore requesting an extension of his time until September 15, 2012, in which to file his reply to the State's Motion for Summary Dismissal.

DATED this 9<sup>th</sup> day of August, 2012.

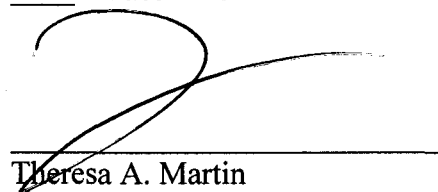
  
\_\_\_\_\_  
THERESA A. MARTIN  
Conflict Counsel for Gregory Nelson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9<sup>th</sup> day of August 2012, a true and correct copy of the foregoing document was served upon counsel as follows:

Ada County Prosecutor  
200 W. Front Street  
Boise, Idaho 83702

☐ U.S. Mail  
☒ Hand Delivery  
☐ Facsimile

  
\_\_\_\_\_  
Theresa A. Martin

AUG 13 2012

CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

**THERESA A. MARTIN**

The Law Office of Theresa A. Martin  
Conflict Counsel for Ada County Public Defender  
380 S. 4<sup>th</sup> St. Ste. 101  
Boise, ID 83702  
Telephone: (208) 336-9401  
Facsimile: (208) 340-3077  
ISB No.: 7781

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY NELSON,

Petitioner,

**VS.**

STATE OF IDAHO,

**Respondent.**

Case No.: CV PC 2011 2496

### ORDER TO EXTEND TIME

The above-entitled matter having come before the Court, and good cause appearing therefore;

THE COURT HEREBY ORDERS AND THIS DOES ORDER Petitioner to have  
until the 15<sup>th</sup> day of September 2012 to file a reply to the State's Motion for  
Summary Dismissal in this matter.

DATED this 13<sup>th</sup> day of August, 2012.

JUDGE

### ORDER TO EXTEND TIME

CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of August 2012, I served a true and correct copy of the within and foregoing document by the method indicated below and addressed to the following:

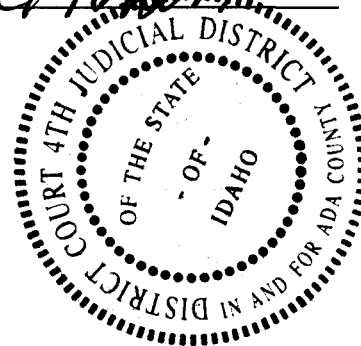
Ada County Prosecutor  
200 W. Front Street, Ste. 3191  
Boise, Idaho 83702

Theresa A. Martin  
Attorney at Law  
380 S. 4<sup>th</sup> St. Ste. 101  
Boise, Idaho 83702

☒ Interdepartmental Mail  
☐ Hand Delivery  
☐ Facsimile: 287-7709

☒ US Mail  
☐ Hand Delivery  
☐ Facsimile: 340-3077

  
Clerk



Norton  
Janine  
8-30-12  
M.

RECEIVED

AUG 29 2012

Ada County Clerk

Gregory J. Nelson  
26.201, IMSI  
P.O. Box 51  
Boise, Idaho 83707-0051

NO. 7.39 FILED  
A.M. 7.39 P.M.

AUG 29 2012

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

In The District Court of The Fourth Judicial District  
of the State of Idaho, In and For The County of Ada

Gregory J. Nelson,  
Petitioner,  
vs.  
State of Idaho,  
Respondent.

Case No. CV-PC-2011-02496

Petitioner's second affidavit  
In Opposition To Respondent's  
Motion For Summary Dismissal

State of Idaho )  
County of Ada ) ( ss:

Gregory J. Nelson, after first being duly sworn  
upon his oath, deposes and says:

1. I am the Petitioner.
2. I am making this affidavit upon personal knowledge and information provided to me.
3. The information contained herein is true and correct.
4. I am competent to testify to the information I am providing herein.
5. This affidavit supplements my affidavit dated July 16, 2012, labeled as: Petitioner's first affidavit In Opposition To Respondent's Motion For Summary Dismissal ("first" affidavit).

Petitioner's second affidavit In Opposition - 1



6. In my first affidavit, p. 2, paragraph 8, I said that a "DNA expert is being consulted." I sent to the DNA expert the following documents for review: 1) Emergency Department Med/Surg Flow Record from Saint Alphonsus Regional Medical Center, dated February 6, 1994; 2) Ann R. Madley's affidavit and lab report of no finding of seminal fluid on any items of the Rape Kit, dated Exhibit 2, dated September 21, 1994, lab number 26470; and 3) Sorenson Forensics' 60-page YSTR analytical notes from their case number SF003699, with various dates, ending on April 2, 2012; I excluded the Sorenson Forensics' Forensic Case Report dated March 30, 2012, containing their opinion.

7. Theresa A. Martin came to discuss this case with me on Friday, August 3, 2012. Theresa indicated to me that a motion for extension of time was going to be filed, to extend the time, to respond to Julianne Meehan's (Ms. Meehan) motion for summary disposition, based upon the DNA experts involvement in this case. In fact, I verified through ROA Report on August 24, 2012, that Theresa's motion had been filed, and Her Honor, Lynn A. Horton, issued an order based upon it. Therefore, I thought I had better draft the instant affidavit to update Her Honor, Ms. Meehan, and Theresa, regarding the progress of the DNA experts activity, especially given the fact I spent hours on the phone, today, 8/24/12, and was unable to reach Theresa on her cell phone, or anyone at her office. I did, however, draft a letter for Theresa, dated 8/23/12.

8. I am also aware, through ROA Report activity, that my motion for entry of default in case no. CV-PC-2012-12194 was denied by Her Honor, and the case stayed, per Her Honor's Order, dated, I believe, August 23, 2012.

9. I spoke with the DNA expert on August 22, 2012, and I received a letter from the DNA expert on August 24, 2012.

10. The DNA expert acknowledged that the YSTR DNA analysis performed by Sorenson Forensics was to exclude individuals, not to identify a specific individual; YSTR DNA analysis is an exclusionary analysis, not an identification analysis.

Petitioner's Second Affidavit In Opposition - 2

11. The DNA expert acknowledged that STR DNA testing (e.g. CODIS) is a DNA identification analysis, to identify a specific individual, from STR DNA tested evidence.
12. The DNA expert opined, that if STR DNA identification analysis would have been conducted on the evidence tested by Sorenson Forensics, no STR DNA profile would have been generated for any human male; only an STR DNA loci profile would have been generated identifying the human female's<sup>1</sup> DNA present on the evidence, "... given the amount of female DNA present (this is determined from the total amount of human DNA compared to the amount of male DNA present)".
13. To the best of my knowledge, STR DNA identification analysis was not performed on the evidence quantified by Sorenson Forensics to determine if, in-fact, that the female DNA present on that evidence, was that of the accuser, Kari Amanda McNeil, as opposed to some other female, or, females.
14. The DNA expert wrote that, "... to my knowledge, there is not a practical and valid test to determine when DNA was deposited on a piece of evidence."
15. The DNA expert's involvement in this case has not concluded. The DNA expert is requesting additional information, in the form of documents, specific to the task. On August 22, 2012 I mailed to the DNA expert some of the specifically-requested documents, relative to the task at hand. I need to discuss with Theresa at attorney visiting as soon as practical, what, specifically, we need to send to the DNA expert to meet the specific request. To this end, I directed one of my brothers to e-mail Theresa about it. The DNA expert requested documents to evaluate, "cross-contamination" aspects in handling the tested evidence. Thus far, the documents I sent to the DNA expert, on 8/22/12, is the 1994 lab notes of Frederick Whitehurst, and the Forensic Biology Report, dated June 28, 2011 (that I RCVD on June 28, 2012), that Ms. Meehan referred to as "... the inventory", at hearing before Her Honor on July 5, 2012. For now, the DNA expert's name, and location shall remain confidential to me and Theresa.

### Petitioner's second Affidavit In Opposition - 3

<sup>1</sup> Or, more than one female; we do not know, however, because there is no indication that STR DNA identification analysis was performed in this case.

16. When I drafted my petition for DNA testing in 2011, I contemplated STR DNA identification analysis, attached to my affidavit, dated January 31, 2011, is a copy of my January 20, 2002 supplemental motion to employ experts (never ruled upon by the Court, to date). On page 7, under "DNA", I requested items to be DNA tested and to "be compared with the known DNA of Gregory Joseph Nelson". I was referring to the CODIS STR DNA identification analysis result from a DNA sample correctional officials obtained from me pursuant to the Idaho DNA Database act of 1996, Idaho Code section 19-5501 et seq. at the time I drafted my petition for DNA testing, I knew of no other DNA test, but for STR (short tandem repeat) DNA identification analysis.<sup>3</sup> On Thursday, February 2, 2012, Y-STR DNA testing was ordered by Judge Williamson. At the time, I did not know what Y-STR DNA testing was.

17. Most recently, I analyzed Idaho Code section 19-4902(b), employing the legal doctrine of *moscitur a sociis*, and ascertaining the commonly understood, everyday meanings of the words therein, because the Idaho Legislature did not provide a definition of the terms and words set forth in I.C. section 19-4902(b). Please see, Ada County assessor v. Roman Catholic Diocese, 123 Idaho 425, 428, 849 P.2d 98, 101 (1993); State v. Richards, 127 Idaho 31, 38, 896 P.2d 357, 364 (Ct. App. 1995). I also cross-referenced to Idaho Code section 19-5501 et seq. in the analysis, because I.C. section 19-4902(b) speaks to "funds allocated" to the Idaho State Lab for DNA testing. I sent to Theresa my rough draft analysis. It is my opinion that I.C. section 19-4902(b) does not contemplate anything other than STR DNA identification analysis. It is also my opinion that the Idaho State Lab, Bureau of Forensic Services, may not send to any private lab, any ~~any~~ evidence to be DNA tested for any DNA test, for other than DNA identification analysis. I.C. section 19-5501 et seq. I believe it is I.C. section 19-5513 that specifically mandates against it. Moreover, based upon speaking with the DNA expert, it is my opinion Cynthia Cunningham and/or her crew at the Idaho State Lab tested, at least microscopically (the evidence tested by Roenson forensics) before requesting Y-STR DNA testing from the Court, testing that was never released to me; otherwise, STR DNA identification analysis would have been conducted.

#### Petitioner's Second Affidavit In Opposition - 4

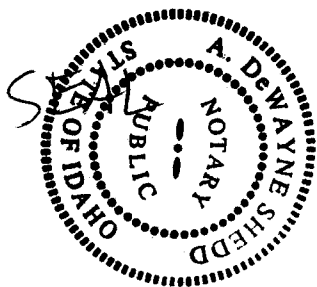
<sup>3</sup> By "tested", I mean by Whitehurst and, during the Idaho State Lab process, by Ann Orskley, in 1994, and, by Cynthia Cunningham, and her crew, in 2011,

at the Idaho State Lab, as the Idaho State Lab is fully capable to conduct CODIS STR DNA identification analysis. I.C. Section 19-5501, et seq. 18. I have attached hereto the affidavit of Mike Percival, my former parole officer. I was on parole for possession with the intent to deliver, 15 1/2 grams of marijuana. Before that, I was on probation for simple, felony possession of marijuana, totaling three point eight ounces (3.8 ozs.), eight tenths of an ounce over misdemeanor level. The 15 1/2 grams of marijuana was placed in separate bags by my live-in girlfriend while I was working, and I was unaware of it until my girlfriend pulled it out of her overnight bag and gave it to my probation officer during a home search. said affidavit states in relevant part: "During my interview, Nelson gave me the same information as to Detective Bob Flaten. Nelson acknowledged to me that the alleged victim had been at his trailer, but there had been no sexual contact between he and the child."

Dated this 27<sup>th</sup> day of August, 2012.

Gregory J. Nelson  
Gregory J. Nelson  
Affiant

Subscribed and sworn to before me on  
this 27 day of August, 2012.



A. Dewayne Shedd  
Notary Public for Idaho  
Residing at: 11/26/13  
My Commission Expires: \_\_\_\_\_

Petitioner's second Affidavit In opposition - 5  
3 and the old RFP DNA testing that is no longer used; it requires large amounts of a DNA sample to obtain results, the bands that we've seen.

Certificate of Service

I hereby certify that on the 27<sup>th</sup> day of August, 2012, I served a copy hereof by U.S. Mail, via the IMJ prison legal mail system, addressed to the following:

Theresa A. Martin  
attorney at law  
380 S. 4<sup>th</sup> St. Ste 101      copy  
Boise, Idaho 83702

Julianne Meehan  
Deputy and County Prosecutor  
200 W. Front St., Room 3191  
Boise, Idaho 83702      copy

Christopher D. Rich  
Clerk of the District Court  
and County Courthouse  
200 W. Front St.  
Boise, Idaho 83702      original

Gregory J. Nelson  
Gregory J. Nelson

Petitioner's second Affidavit In Opposition - 6

CASE # \_\_\_\_\_

NOTIFICATION OF RIGHTS

1. I HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING I SAY MAY BE USED AGAINST ME IN A COURT OF LAW.
3. I HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH ME WHILE BEING QUESTIONED.
4. IF I CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT ME FREE OF CHARGE BEFORE ANY QUESTIONING.
5. I CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS, AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.
6. I UNDERSTAND THESE RIGHTS, AND HAVING THEM IN MIND, I WISH TO TALK TO THE OFFICER NOW.

SIGNED

Gregory J. Nolan

DATE

2-7-97

TIME

10:36

LOCATION

\_\_\_\_\_

WITNESSED BY

Michael D. Percival

\_\_\_\_\_

00081

Exhibit 000433 to  
AFF. of Mike Percival

GREG H. BOWER  
Ada County Prosecuting Attorney

Julianne Meehan  
Deputy Prosecuting Attorney  
602 West Idaho Street  
Boise, Idaho 83702-5954  
Telephone: (208) 364-2121

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Cr. 21080
	)	
-vs.-	)	AFFIDAVIT OF MIKE PERCIVAL
	)	
GREGORY JOSEPH NELSON,	)	
	)	
Defendant.	)	
	)	

---

1. I am currently a parole officer for the Idaho Department of Corrections and have been so for approximately five years.

2. On February 7, 1994, I was the supervising parole officer for Gregory Nelson.

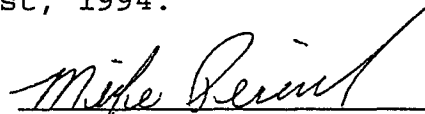
3. After learning that Gregory Nelson had been arrested on February 6, 1994, on charges of Lewd Conduct With a Minor, I went to the Ada County Jail to speak with Nelson, and in fact, spoke with him.

4. I first read Nelson his Miranda rights and had him sign a Notification of Rights form (attached as Exhibit A).

00079


5. During my interview, Nelson gave me the same information as to Detective Bob Flaten. Nelson acknowledged to me that the alleged victim had been at his trailer, but there had been no sexual contact between he and the child.

DATED THIS 03 day of August, 1994.



Mike Percival  
Parole Officer

SUBSCRIBED AND SWORN to before me this 3 day of August, 1994.

By:   
Notary Public for State of Idaho  
Residing in Boise, Idaho  
Commission expires: 5-8-95



SEP 05 2012

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

GREGORY NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-2496

ORDER BARRING PETITIONER FROM  
FILING DOCUMENTS

This court filed its Orders on Various Motions Filed June 2012 and Amended Scheduling Order on July 6, 2012. The Petitioner, *pro se*, filed a Motion to Strike on July 6, 2012, a Notice of Lodging of Forensic Biology Report on July 6, 2012, a Motion to Strike Amended Order Based on Stipulation Regarding Sealing, Transportation and DNA Testing on July 11, 2012, Petitioner's First Affidavit in Opposition to Respondent's Motion for Summary Dismissal on July 18, 2012, and Petitioner's Second Affidavit in Opposition to Respondent's Motion for Summary Dismissal on August 29, 2012.

His counsel requested and was granted an extension of time to file a response to the motion for summary dismissal until September 15, 2012.

The Petitioner requested court-appointed counsel to represent him in this case, and counsel was appointed. The Petitioner continues to file matters *pro se*. The Petitioner can either represent himself *pro se* or be represented by appointed counsel, but he cannot do both.

IT IS HEREBY ORDERED that while the Petitioner is represented by counsel, he shall not file any motions or other documents with the court, but all such motions or other documents

*W*

must be filed by his counsel, with the exception that if he chooses to do so, the Petitioner may file a motion *pro se* to terminate his representation by counsel and to represent himself throughout the duration of these proceedings.

Dated this 3<sup>rd</sup> day of September, 2012.

  
Lynn G. Norton, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on this 6th day of September, 2012, I mailed (served) a true and correct copy of the within instrument to:

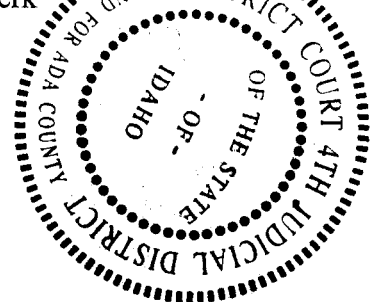
JULIANNE MEEHAN  
DEPUTY PROSECUTING ATTORNEY  
HAND DELIVERED IN COURT

THERESA MARTIN  
ATTORNEY AT LAW  
HAND DELIVERED IN COURT

GREGORY NELSON  
HAND DELIVERED IN COURT

CHRISTOPHER D. RICH  
Clerk of the District Court

By:   
Deputy Court Clerk



**GREG H. BOWER**  
Ada County Prosecuting Attorney

**SEP 05 2012**  
CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

**Julianne Meehan**  
Idaho State Bar No. 3313  
Deputy Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, Idaho 83702  
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,	)	
	)	<b>Case No. CV PC 2011 02496</b>
Petitioner,	)	
	)	<b>AMENDED ORDER BASED ON</b>
vs.	)	<b>STIPULATION REGARDING</b>
	)	<b>SEALING, TRANSPORTATION</b>
THE STATE OF IDAHO,	)	<b>AND DNA TESTING OF TRIAL</b>
	)	<b>EVIDENCE IN</b>
Respondent.	)	<b>CR-FE-0000-0021080</b>
_____	)	

The Stipulation Regarding Sealing, Transportation and DNA Testing of Trial Evidence having come before the Court and good cause being shown,

**IT IS HEREBY ORDERED AND THIS DOES ORDER**, that the following procedures be followed to allow for additional DNA testing of the evidence submitted in the trial under Ada County Case number CR-FE-0000-0021080.

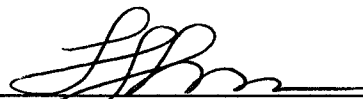
1. That the Rape Kit (admitted as State's exhibit no.2) and Bag w/ Underwear (admitted as State's exhibit no.6) are presently under the custody of the Ada County EXHIBITS/EVIDENCE CLERK. (See attached Trial Exhibit List).

**ORDER BASED ON STIPULATION REGARDING SEALING, TRANSPORTATION  
AND DNA TESTING OF TRIAL EVIDENCE IN CR-FE-0000-0021080 (NELSON),**

2. That Sean O'Connor, Investigator for the Ada County Prosecutor's office shall seal with evidence tape the Rape Kit which is currently unsealed.
3. That Sean O'Connor, Investigator with the Ada County Prosecutor's Office shall transport the Rape Kit (sealed condition) and Bag w/ Underwear to the Idaho State Forensic Lab.
4. Once the Rape Kit and Bag w/ Underwear are received by the Idaho State Forensic Lab, lab personal shall inventory the Rape Kit and Bag w/ Underwear to determine the exact contents of the exhibits. The inventory shall be provided to Julianne Meehan who will then provide a copy a copy to Joseph Ellsworth. At that time the State and Defense contemplate entering into an additional stipulation regarding possible DNA testing of the Rape Kit and Bag w/ Underwear.
5. If any of the above items are lost or destroyed during the testing or transportation from the Ada County Clerk's office to the lab, the defendant will not object to the admission of any of the above items or test results in any proceeding on grounds of lack of chain of custody, foundation or the absence of the item itself.
6. *All items picked up to be tested from Ada County Clerk's Office will be returned to the Ada County Clerk's Office at the conclusion of the DNA testing.*
7. *That the DNA sample taken from Gregory Nelson by Boise City Police Detective Morgan be returned to Boise City Police Department property at the conclusion of the DNA testing.*

**IT IS SO ORDERED.**

**DATED** this 3<sup>rd</sup> day of July 2012.

  
\_\_\_\_\_  
District Judge

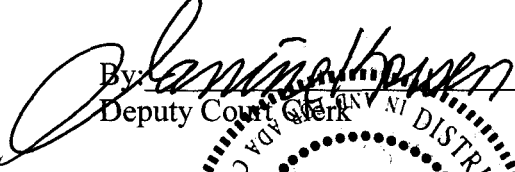
## CERTIFICATE OF MAILING

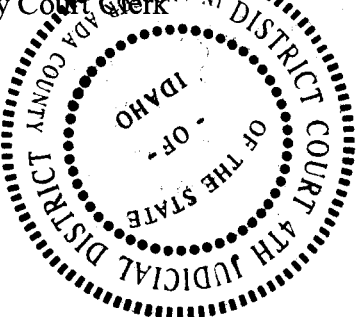
I hereby certify that on this 6th day of September, 2012, I mailed (served) a true and correct copy of the within instrument to:

JULIANNE MEEHAN  
DEPUTY PROSECUTING ATTORNEY  
HAND DELIVERED IN COURT

THERESA MARTIN  
ATTORNEY AT LAW  
HAND DELIVERED IN COURT

CHRISTOPHER D. RICH  
Clerk of the District Court

By:   
Deputy Court Clerk



The seal is circular with a dotted border. The text inside the seal reads: "DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO ADA COUNTY".

BY:   
Deputy Clerk

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY JOSEPH NELSON,

Petitioner,

VS.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-02496

ORDER TO TRANSPORT

It appearing that the above-named Petitioner is in the custody of the Idaho Department of Corrections, and that it is necessary that **GREGORY JOSEPH NELSON** be brought before this Court for **MOTION ON THURSDAY, OCTOBER 25, 2012 AT 11:00 AM.**

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho Department of Corrections release the said Petitioner to the Ada County Sheriff for the purpose of the aforementioned appearance and retake **GREGORY JOSEPH NELSON** into

ORDER TO TRANSPORT

custody from the Sheriff upon **GREGORY JOSEPH NELSON** return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: Tuesday, September 18, 2012

A handwritten signature in black ink, appearing to read "Lynn G. Norton", written over a horizontal line.

LYNN G NORTON  
District Judge

ORDER TO TRANSPORT



## CERTIFICATE OF MAILING

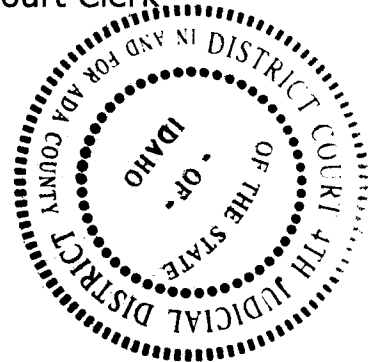
I hereby certify that on WEDNESDAY, SEPTEMBER 19, 2012, I mailed  
(served) a true and correct copy of the within instrument to:

Department of Corrections  
Faxed

Ada County Jail  
Faxed

CHRISTOPHER D. RICH  
Clerk of the District Court

By: *Janine Hansen*  
Deputy Court Clerk



OCT 25 2012

CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

**THERESA A. MARTIN**

The Law Office of Theresa A. Martin  
Conflict Counsel for Ada County Public Defender  
380 S. 4<sup>th</sup> St. Ste. 101  
Boise, Idaho 83702  
Telephone: (208) 336-9401  
Facsimile: (208) 342-3077  
I.S.B. No. 7781

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY NELSON,	)	
	)	Case No.: CV PC 2011 2496
Petitioner,	)	
vs.	)	
	)	<b>STIPULATION TO EXTEND TIME</b>
STATE OF IDAHO,	)	
	)	
<u>Respondent.</u>	)	

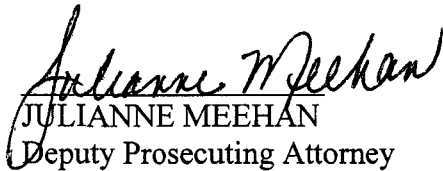
COMES NOW GREGORY NELSON, by and through his conflict counsel of record, Theresa A. Martin, and Ada County Deputy Prosecuting Attorney, Julianne Meehan, and hereby requests an extension of the time for filing a response to the Motion for Summary Dismissal in the above-entitled case. This motion is brought based on the following circumstances:

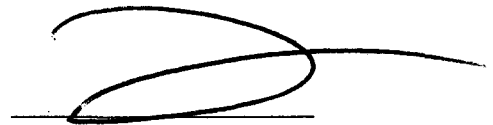
Plaintiff's conflict counsel of record was involved in trials which prevented her

from filing a timely reply to State's Motion for Summary Dismissal. Plaintiff's conflict counsel also had difficulty meeting with Plaintiff as he is incarcerated and during the time conflict counsel had scheduled to visit with Plaintiff, the section of the prison which houses Plaintiff was put on visitation restriction.

Petitioner is therefore requesting an extension of his time until November 1, 2012, in which to file his reply to the State's Motion for Summary Dismissal.

DATED this 24<sup>th</sup> day of October, 2012.

  
JULIANNE MEEHAN  
Deputy Prosecuting Attorney

  
THERESA A. MARTIN  
Conflict Counsel for Gregory Nelson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23<sup>rd</sup> day of October, 2012, a true and correct copy of the foregoing document was served upon counsel as follows:

Ada County Prosecutor  
200 W. Front Street  
Boise, Idaho 83702

☐ U.S. Mail  
☐ Hand Delivery  
☒ Facsimile

  
\_\_\_\_\_  
Theresa A. Martin

OCT 25 2012

CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

**THERESA A. MARTIN**

The Law Office of Theresa A. Martin  
Conflict Counsel for Ada County Public Defender  
380 S. 4<sup>th</sup> St. Ste. 101  
Boise, ID 83702  
Telephone: (208) 336-9401  
Facsimile: (208) 340-3077  
ISB No.: 7781

Attorney for Petitioner

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No.: CV PC 2011 2496

**ORDER TO EXTEND TIME**

The above-entitled matter having come before the Court, and good cause appearing therefore;

THE COURT HEREBY ORDERS AND THIS DOES ORDER Petitioner to have until the 1<sup>st</sup> day of November, 2012 to file a <sup>response</sup> ~~reply~~ to the State's Motion for Summary Dismissal in this matter. The Respondent has until November 8, 2012 to file a reply brief.  
DATED this 25<sup>th</sup> day of October, 2012.

  
JUDGE

ORDER TO EXTEND TIME

CERTIFICATE OF SERVICE

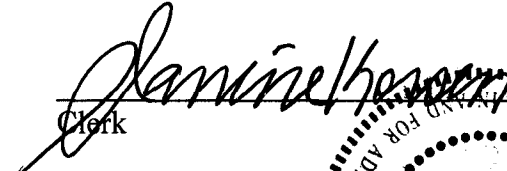
I hereby certify that on this 26<sup>th</sup> day of October 2012, I served a true and correct copy of the within and foregoing document by the method indicated below and addressed to the following:

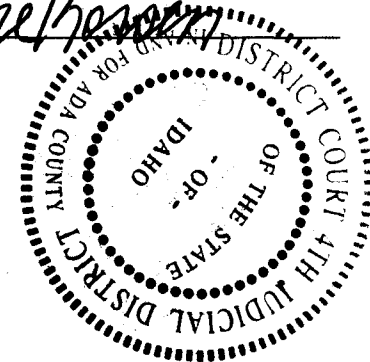
Ada County Prosecutor  
200 W. Front Street, Ste. 3191  
Boise, Idaho 83702

Theresa A. Martin  
Attorney at Law  
380 S. 4<sup>th</sup> St. Ste. 101  
Boise, Idaho 83702

☒ Interdepartmental Mail  
☐ Hand Delivery  
☐ Facsimile: 287-7709

☒ US Mail  
☐ Hand Delivery  
☐ Facsimile: 340-3077

  
Clerk



BY:   
Deputy Clerk

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY JOSEPH NELSON,

Petitioner,

vs.

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-02496

ORDER TO TRANSPORT

It appearing that the above-named Petitioner is in the custody of the Idaho Department of Corrections, and that it is necessary that **GREGORY JOSEPH NELSON** be brought before this Court for **MOTION FOR SUMMARY DISMISSAL ON THURSDAY, DECEMBER 06, 2012 AT 11:00 AM.**

IT IS THEREFORE ORDERED That the Ada County Sheriff bring the Petitioner from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff return said Petitioner to the custody of the Idaho State Penitentiary;

IT IS FURTHER ORDERED That the Idaho Department of Corrections release the said Petitioner to the Ada County Sheriff for the purpose of the

ORDER TO TRANSPORT

aforementioned appearance and retake **GREGORY JOSEPH NELSON** into custody from the Sheriff upon **GREGORY JOSEPH NELSON** return to the Penitentiary.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho Department of Corrections and the Ada County Sheriff forthwith and certify to the same.

Dated: Monday, October 29, 2012



---

LYNN G NORTON  
District Judge

ORDER TO TRANSPORT

000251



## CERTIFICATE OF MAILING

I hereby certify that on MONDAY, OCTOBER 29, 2012, I mailed  
(served) a true and correct copy of the within instrument to:

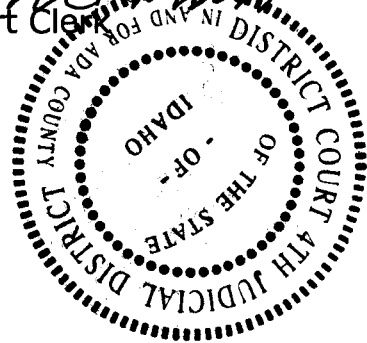
Department of Corrections  
Faxed

Ada County Jail  
Faxed

CHRISTOPHER D. RICH  
Clerk of the District Court

By:

  
Deputy Court Clerk



Norton  
JANINE  
11-2-12.  
a

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 135

NOV 01 2012

CHRISTOPHER D. RICH, Clerk  
By JERI HEATON  
DEPUTY

**THERESA A. MARTIN**  
The Law Office of Theresa A. Martin  
Conflict Counsel for Ada County Public Defender  
380 S. 4<sup>th</sup> St. Ste. 101  
Boise, Idaho 83702  
Telephone: (208) 336-9401  
Facsimile: (208) 342-3077  
ISB No.: 7781

Attorney for Gregory Nelson

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY J. NELSON,	)	<b>Case No.: CV PC 2011 2496</b>
	)	
Petitioner,	)	
	)	
vs.	)	<b>OBJECTION TO RESPONDENT'S</b>
	)	<b>MOTION FOR SUMMARY DISMISSAL</b>
	)	
STATE OF IDAHO,	)	
	)	
<u>Respondent.</u>	)	

COMES NOW Gregory J. Nelson, Petitioner, by and through his attorney, Theresa A. Martin, and hereby objects to Respondent's Motion for Summary Dismissal.

Petitioner respectfully requests that the Court consider Petitioner's First Affidavit in Opposition to Respondent's Motion for Summary Dismissal filed on July 18, 2012 and Petitioner's Second Affidavit in Opposition to Respondent's Motion for Summary Dismissal filed on August 29, 2012. Petitioner also requests that the Court consider two letters from George Schiro of Forensic Science Resources (Exhibit A and B) attached to this Objection to Motion for Summary Dismissal.

Petitioner contends that the DNA testing conducted was insufficient to comply with Idaho Code § 19-4902 (b) as the Y STR analysis cannot be linked to a specific individual.

Ma

WHEREFORE, Petitioner respectfully requests that the Court deny Respondent's Motion for Summary Dismissal and set an evidentiary hearing on the matter.

DATED this 31st day of October, 2012.

A handwritten signature in black ink, consisting of a large, stylized 'T' followed by a horizontal line.

---

Theresa A. Martin  
Conflict Counsel for Gregory Nelson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of November, 2012, a true and correct copy of the foregoing document was served upon counsel as follows:

Ada County Prosecutor  
200 W. Front Street  
Boise, Idaho 83702

☐ U.S. Mail  
☒ Hand Delivery  
☐ Facsimile:

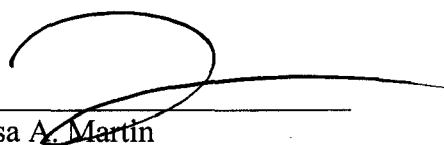
  
\_\_\_\_\_  
Theresa A. Martin

EXHIBIT A  
**FORENSIC SCIENCE RESOURCES®**

P.O. Box 188, Cade, LA 70519 USA ♦ Gjschiro@cs.com

August 18, 2012

Gregory J. Nelson  
26.201, IMSI, B-87  
P.O. Box 51  
Boise, ID 83707-0051

Dear Mr. Nelson:

I reviewed the documentation that you sent me, including the Emergency Department Med/Surg Flow Record from Saint Alphonsus Regional Medical Center, Ann R. Bradley's affidavit and lab report for lab number 26470, and Sorenson Forensics' Y STR analytical notes from their case number SF003699. As I stated to your brother, with the current state of Y STR analysis, the results cannot be linked to a specific individual; however, in this case, based on the current Y STR results, you cannot be excluded as a potential source of the Y STR DNA profile obtained from the swabs.

In this case, a review of the notes indicates that Sorenson Forensics carried out the testing properly and the results of the test are valid. Their selection of the Yfiler kit was proper, given the amount of female DNA present (this is determined from the total amount of human DNA compared to the amount of male DNA present) and the greater discriminating power of the Yfiler kit versus the PowerPlex Y kit. Due to the large number of variables, there is no way to correlate the amount of DNA present to when and how the DNA was deposited. Also, to my knowledge, there is not a practical and valid test to determine when DNA was deposited on a piece of evidence. Based on the current state of DNA testing and the information provided so far, I will not be able to assist you with your case.

If you suspect that there has been tampering with the sexual assault kit, then, I think, you should continue to pursue this through the courts with your attorney, and, perhaps, with the assistance of the Idaho Innocence Project. I am enclosing some information regarding their case submission policy and contact information. If some new information arises, please contact me by mail, and, if I feel that I can assist you, I'll respond to you. Take care and good luck.

Sincerely,

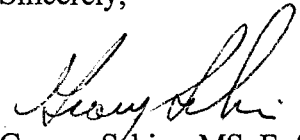
  
George Schiro, MS, F-ABC  
Consulting Forensic Scientist

EXHIBIT "B"

# FORENSIC SCIENCE RESOURCES®

P.O. Box 188, Cade, LA 70519 USA ♦ Gjschiro@cs.com

September 9, 2012

Gregory J. Nelson  
26.201, IMSI, B-87  
P.O. Box 51  
Boise, ID 83707-0051

Dear Mr. Nelson:

I reviewed the documentation that you sent me in your correspondence dated July 12, 2012; July 15, 2012; July 26, 2012; August 2, 2012; August 15, 2012; August 22, 2012; August 28, 2012; and August 29, 2012. Upon review of the documents that you sent to me, I do not think that there was tampering of the rape kit contents. The issue seems to revolve around the description and contents of Q13. I think that all of the descriptions vary, but they are describing the same thing. The FBI notes dated 4/7/94 describe Q13 as "A white envelope labeled 'Step 1 – Special Evidence (if applicable). Use swab for dried secretions or genital swabbings.'" The Idaho State Police Forensic Services Forensic Biology Report dated June 28, 2011 describes Q13 as "A glue-sealed white special evidence envelope containing two wooden toothpicks." Sorenson Forensics' laboratory notes dated Mar 2 2012 12:50PM describe Q13 as "a white envelope, TS&I, M: '...Q13...special evidence...dried secretions...fingernail...'" It has been my experience that some rape kit manufacturers include a multi-purpose envelope to collect additional evidence that might be present. Based on the descriptions, this envelope could have been used to collect "special evidence," such as fingernail scrapings, dried secretions, and/or genital swabbings. The toothpicks would have been to collect fingernail scrapings. If they were collected in this case, it might be worthwhile having them DNA tested.

There is a discrepancy in the description of Q11. The FBI notes dated 4/7/94 describe Q11 as "A white envelope labelled 'Step 2 –Pubic Hair Combing...'" The Idaho State Police Forensic Services Forensic Biology Report dated June 28, 2011 describes Q11 as "A glue-sealed white envelope said to contain 'moist genital swabs.'" Sorenson Forensics' laboratory notes dated Mar 2 2012 12:50PM describe Q11 as "a white envelope, gum seal unmarked, M: '...Q11...pubic hair combings...'" The Idaho State Police Forensic Services' description of Q11 is obviously different than the FBI and Sorenson Forensics' descriptions of Q11; however, this could simply be a mistake on the report that has made its way through the system. I have seen similar mistakes on finalized reports before.

It is possible that your DNA could have been inadvertently transferred from the baby oil bottle to the vaginal and anal swabs during the analysis for baby oil; however, without testing protocols, more detailed notes, and information from the individuals who conducted the tests, it will not be possible to determine this. Also, I do not know if this would be a factor in your appeal since it appears that no DNA or serological evidence was presented during your trial. Since I am not an attorney, this would best be discussed with your attorney.

Finally, I reviewed the testimony of Mr. Whitehurst. His testimony appears to be reasonable, objective, and within the confines of general forensic science; however, I am not an

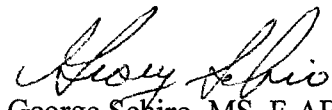
# FORENSIC SCIENCE RESOURCES®

P.O. Box 188, Cade, LA 70519 USA ♦ Gjschiro@cs.com

expert in the field of mineral oil analysis, so I cannot address the particulars of his findings or his testimony. In addition to his testimony, if you can gather all of his available notes, data, exhibits, protocols, and reports, then, perhaps, you can present these items to an expert in that field so Mr. Whitehurt's findings and testimony can be thoroughly evaluated. This would be another matter to discuss with your attorney.

As for the other issues that you have raised in your correspondence, affidavits, and documentation, they are out of my area of expertise. If some new DNA information arises, please contact me by mail, and, if I feel that I can assist you, I'll respond to you. Take care and good luck.

Sincerely,



George Schiro, MS, F-ABC  
Consulting Forensic Scientist

DEC 12 2012

CHRISTOPHER D. RICH, Clerk  
By JANINE KORSEN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,	)	
	)	Case No. CV-PC-2011-02496
Petitioner,	)	
vs.	)	DECISION AND ORDER GRANTING
	)	SUMMARY DISMISSAL
STATE OF IDAHO,	)	
	)	
Respondent.	)	
_____	)	

Appearances:

Theresa Martin for Petitioner, Mr. Nelson appeared in person  
Julianne Meehan for Respondent

THIS MATTER came before the Court on December 6, 2012, for a hearing on the Respondent's Motion for Summary Dismissal on the Petitioner's Petition for Performance of DNA Testing, pursuant to Idaho Code §19-4902.

**BACKGROUND**

In Ada County Case No. HCR 21080, Petitioner Gregory Nelson was found guilty at a jury trial in 1995 of kidnapping in the first degree (Idaho Code §19-4501) and of lewd conduct with a child under the age of sixteen (Idaho Code §18-1508). He was sentenced by the district court to concurrent fixed terms of life imprisonment. Nelson appealed the judgment and his sentence, and the Court of Appeals affirmed the district court. *See, State v. Nelson*, 131 Idaho 210, 953 P.2d 650 (Ct.App. 1998).

Thereafter, in December 1999, Nelson filed his First Application for Post-Conviction Relief ("First Application") in SP-OT-99-00773D, alleging over forty (40) grounds. The First Application was dismissed by the district court, and Nelson's motion for reconsideration of this



decision was denied. Nelson appealed, and the district court was affirmed in an unpublished decision. *See, Nelson v. State*, Docket No. 27266 (Ct.App. Sept. 22, 2003).

Nelson, pro se, filed a Second Application for Post-Conviction Relief (“Second Application”) on June 10, 2003, in SP-OT-03-0054D, and the district court issued notice of intent to dismiss, with the end result being that the district court dismissed, upon its own motion, all of the claims in Nelson’s application, except two: (1) an allegation that the State withheld information from the defense; and (2) that the State elicited false or misleading testimony. Nelson argued with the rubric of ineffective assistance of counsel that his trial counsel should have had a towel collected by police tested for the presence of evidence because tests could have shown the towel possessed exculpatory value. The State filed an answer and moved to dismiss, arguing that all of Nelson’s claims were procedurally barred under Idaho Code §§19-4902 and 19-4908. At hearing, the district court granted the State’s motion and dismissed the Second Application in its entirety. On appeal, the Court noted that Nelson further asserted that because the towel was either lost or destroyed, his right to due process was violated. The Court of Appeals affirmed, in an unpublished opinion. *See Nelson v. State*, Docket No. 30771 (Ct.App. June 28, 2005).

On January 5, 2006, Nelson, pro se, filed a Third Application for Post-Conviction Relief which was denied on March 24, 2006, because the grounds asserted were waived, successive, or lacking in evidentiary support. The Court also found the Application to be frivolous.

On March 28, 2007, Nelson, pro se, filed his Fourth Application for Post-Conviction Relief, which was summarily dismissed by order entered on November 20, 2007, for the reasons the grounds asserted were waived, successive, or lacking in evidentiary support.

On February 3, 2011, Nelson, pro se, filed his Fifth Application for Post-Conviction Relief (“This Application”) and affidavit in support. This Petition for Performance of Forensic Deoxyribonucleic Acid (DNA) Testing, pursuant to Idaho Code §19-4902, requested DNA testing of State’s Exhibit 2 (the “rape kit”) and State’s Exhibit 6 (“underware” (sic)) admitted as evidence in HCR 21080. By bench order, Judge Darla Williamson appointed the Ada County Public Defender’s Office as counsel for Mr. Nelson on March 3, 2011, since Mr. Nelson was indigent. Joseph Ellsworth appeared as a conflict public defender on April 14, 2011. Theresa Martin then substituted as conflict public defender on August 3, 2011.<sup>1</sup>

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<sup>1</sup> Notice of Substitution of Counsel, 8/3/2011.

The Petitioner and the Respondent stipulated to the DNA testing requested in the Petition, and Judge Williamson ordered DNA testing on April 14, 2011. An Order Regarding Payment for Testing was entered on July 12, 2011. After a hearing on the payment for the test and the type of DNA testing available through the Idaho State Police lab, a subsequent order regarding payment of the costs of testing was entered on February 2, 2012.

An Answer to the Petition was filed by the Respondent on May 29, 2012. The Petitioner then filed several matters pro se; the Court held a hearing on these motions on July 5, 2012; and, issued its order on those motions on July 6, 2012.

Petitioner filed a pro se Supplemental Motion for Post-Conviction Relief under this case number on June 21, 2012, after the Respondent had answered and without leave of the Court. That Motion made claims beyond the DNA Testing requested in This Application. The Petitioner filed that same motion as a Motion for Post-Conviction Relief on August 23, 2012, pro se, which would be his Sixth Application for Post-Conviction Relief ("Sixth Application") as Ada County Case No. CV PC 2012-12194. The Court stayed proceedings on the Sixth Application pending the outcome of This Application and a decision will be separately issued in that proceeding.

To refute This Application, the Respondent filed a Motion for Summary Dismissal with Exhibit 1, under seal, on June 27, 2012. The Court took judicial notice of the Judgment of Conviction in the underlying criminal case. The Petitioner filed a "Supplement to the Supplemental Motion" on July 2, 2012, without leave of the Court, two affidavits in opposition to the summary judgment, a Motion to Strike on July 6, 2012, a forensic biology report on July 6, 2012, and a Motion to Strike Amended Order on July 11, 2012. All of these matters were filed directly with the Court, did not appear to have had copies served on his counsel or the Respondent, and were filed during the time he was represented by counsel so were the cause of this Court's September 5, 2012 order.

Respondent's counsel had requested and was given an extension of time, until November 1, 2012, to file a response to the Motion for Summary Dismissal. The Petitioner filed an Objection to Respondent's Motion for Summary Dismissal with two attachments on November 1, 2012, which requested the Court to also consider the Petitioner's First Affidavit in Opposition to Respondent's Motion for Summary Dismissal, filed on July 18, 2012; and the Petitioner's Second Affidavit in Opposition to Respondent's Motion for Summary Dismissal, filed on August 29, 2012.

The Court considered the Petition<sup>2</sup> with its accompanying affidavit,<sup>3</sup> Answer,<sup>4</sup> the Motion for Summary Dismissal and State's Exhibit 1, Forensic Case Report,<sup>5</sup> and it also considered the Objection to Respondent's Motion and Exhibits A and B,<sup>6</sup> Petitioner's First Affidavit in Opposition to Respondent's Motion for Summary Dismissal to the extent discussed below (First Affidavit),<sup>7</sup> and the Petitioner's Second Affidavit in Opposition to Respondent's Motion for Summary Dismissal to the extent discussed below (Second Affidavit).<sup>8</sup> The Court did not consider the following matters, filed pro se but not offered at the hearing on the motion for summary dismissal: the Supplemental Motion,<sup>9</sup> the verified response to answer<sup>10</sup> and affidavit filed the same day,<sup>11</sup> the supplement to the supplemental petition,<sup>12</sup> or the Forensic Biology Report which is an inventory of items received for testing (Petitioner's Forensic Inventory).<sup>13</sup>

The Petitioner filed pro se a motion to strike Respondent's Exhibit 1 with an accompanying affidavit.<sup>14</sup> Rule of Civil Procedure 12(f) gives the Court discretion to strike redundant, immaterial, impertinent, or scandalous matters from *pleadings*. I.R.C.P. 12(f). However, the exhibit submitted in support to a motion for summary judgment is not a pleading and the exhibit was not redundant, immaterial, impertinent, or scandalous. Therefore, the motion to strike was denied at the hearing and the Court considered Respondent's Exhibit 1.

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<sup>2</sup> Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing, I.C. §19-4902(b), filed 2/3/2011.

<sup>3</sup> Affidavit of Gregory Joseph Nelson in Support of Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing, I.C. §19-4902(b), filed 2/3/2011.

<sup>4</sup> Answer to Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing, 5/29/2012.

<sup>5</sup> Respondent's Motion for Summary Dismissal, 6/27/2012, with State's Exhibit 1, Forensic Case Report by Sorenson Forensics, dated 3/30/2012, in reference to Gregory Nelson (filed under seal).

<sup>6</sup> Objection to Respondent's Motion for Summary Dismissal, filed 11/1/2012, including two unsworn letters of George Schiro of Forensic Science Resources.

<sup>7</sup> Petitioner's First Affidavit in Opposition to Respondent's Motion for Summary Dismissal, 7/18/2012 (First Affidavit). For record purposes, this is actually the fourth affidavit in this case filed by the Petitioner but will be referred to in this decision by the Petitioner's heading of "First Affidavit."

<sup>8</sup> Petitioner's Second Affidavit in Opposition to Respondent's Motion for Summary Dismissal, 8/29/2012 (Second Affidavit). For record purposes, this is actually the fifth affidavit in this case filed by the Petitioner but will be referred to in this decision by the Petitioner's heading of "Second Affidavit."

<sup>9</sup> Supplemental Motion for Post-Conviction Relief, I.C. §19-4902(b), filed 6/21/2012.

<sup>10</sup> Verified Response to Answer to Petition for the Performance of Forensic Deoxyribonucleic Acid (DNA) Testing, 6/21/2012.

<sup>11</sup> Affidavit of Nelson, 6/21/2012.

<sup>12</sup> Supplement to Supplemental Motion for Post-Conviction Relief, I.C. §19-4901, et seq; Rule 57 Idaho Criminal Rules.

<sup>13</sup> Certified Notice of Lodging RE: Forensic Biology Report, Dated 6/28/2011, filed 7/6/2012 with one Exhibit.

<sup>14</sup> Motion to Strike, 7/6/2012, with attached affidavit.

## LEGAL STANDARDS

The Uniform Post-Conviction Procedure Act, I.C. §§19-4901 through 19-4911, allows individuals convicted and/or sentenced for a crime to petition the Court for relief if the Petitioner alleges he is innocent, subject to the provisions for DNA testing in the statute. I.C. §19-4901(a). Specifically, I.C. §19-4902(b) through (g) govern requests for DNA testing.

The Petitioner must present a prima facie case that (1) identity was an issue in the trial which resulted in his conviction; and (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that such evidence has not been substituted, tampered with, replaced or altered in any material aspect.<sup>15</sup> I.C. §19-4902(c). Once the Petitioner has presented a prima facie case, a Court “shall” allow testing under reasonable conditions in I.C. §19-4902(e) after the Court determines the result of the testing has the scientific potential to produce new, noncumulative evidence that would show that it is more probable than not that the Petitioner is innocent. I.C. §19-4902(g) governs the cost of the test and testing methods provided at public expense.<sup>16</sup>

Pursuant to I.C. §19-4902(f), in the event the forensic DNA test results demonstrate, in light of all admissible evidence, that the Petitioner is not the person who committed the offense, the Court shall order the appropriate relief.

Summary disposition under I.C. §19-4906 is the “procedural equivalent of a summary judgment motion under I.R.C.P. 56.” *Pratt v. State*, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000); *see also, Martinez v. State*, 125 Idaho 844, 846, 875 P.2d 941, 943 (Ct. App. 1994). In “determining whether a motion for summary disposition is properly granted, the Court reviews the facts in a light most favorable to the petitioner and determines whether the facts would entitle petitioner to relief if accepted as true.” *Pratt*, 134 Idaho at 583, 6 P.3d at 833.

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<sup>15</sup> Although the Petitioner must present a prima facie case that the evidence chain of custody remained intact for testing, the parties stipulated to the DNA testing in this case. The Respondent admits in its Answer that identity was an issue at trial and a chain of custody was maintained. Answer, ¶¶ 3, 4. There was no finding of a prima facie showing, and Judge Williamson did not address the Petition and supplemental materials that tend to attack the reliability of the chain of custody. Since the parties stipulated to the DNA testing, and the testing was conducted, this Court will not address whether the prima facie elements were met by Petitioner in this proceeding.

<sup>16</sup> I.C. §19-4902(g) was amended while this case was pending. The YSTR DNA testing was ordered after hearing on 2/2/2012. The testing was conducted at the expense of the State, although YSTR testing was not available at the Idaho State Police lab and was outsourced and paid by the State. Respondent’s Exhibit 1, p. 18. Ultimately, the Forensic Case Report was completed on 3/30/2012. I.C. §19-4902(g) was amended, effective 3/29/2012, clarifying DNA testing at the expense of the Idaho State Police. Under that amendment, the State would not have been required to outsource or conduct the YSTR test at their expense. The test, under the amendment, or any other type of DNA testing not available through the Idaho State Police lab, would be at the Petitioner’s expense.

Summary dismissal of a petition for post-conviction relief is appropriate if “the petitioner has not presented evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof.” *Id.*; *Berg v. State*, 131 Idaho 517, 518-19, 960 P.2d 738, 739-40 (1998); I.C. §19-4903. A Court is not required to accept the applicant’s “mere conclusory allegations, unsupported by admissible evidence, or the applicant’s conclusions of law” in deciding whether to grant a motion to dismiss. *Goodwin v. State*, 138 Idaho 269, 271-72, 61 P.3d 626, 628-29 (Ct.App. 2002) (citing *Roman v. State*, 125 Idaho 644, 647, 873 P.2d 989, 901 (Ct.App. 1994)); *Baruth v. Gardner*, 110 Idaho 156, 159, 716 P.2d 369, 373 (Ct.App. 1986). Facts within the personal knowledge of the applicant, and the authenticity of all documents and exhibits included in or attached to the application, must be sworn to affirmatively as true and correct. *Berg v. State*, 131 Idaho at 518-19, 960 P.2d at 739-40; I.C. §19-4902. The applicant’s factual showing must be based upon evidence that would be admissible at hearing. *Martinez v. State*, 125 Idaho at 846, 875 P.2d at 941; *Drapeau v. State*, 103 Idaho 612, 617, 651 P.2d 546, 551 (Ct. App. 1982). At summary disposition of a post-conviction petition, affidavits must satisfy the Idaho Rule of Civil Procedure which requires affidavits to be made upon personal knowledge setting forth facts that would be admissible at trial. Where petitioner’s affidavits are based upon hearsay rather than personal knowledge, summary disposition without an evidentiary hearing is appropriate. *Ivey v. State*, 123 Idaho 77, 80-81, 844 P.2d 706, 709–10 (1992).

A petition for post-conviction relief is civil in nature and distinct from the criminal action which led to conviction. *Stuart v. State*, 136 Idaho 490, 494, 36 P.3d 1278, 1282 (2001); *Peltier v. State*, 119 Idaho 454, 456, 808 P.2d 373, 375 (1991). Like a plaintiff in a civil action, a petitioner seeking post-conviction relief must bear the burden of proving the allegations upon which the petitioner for post-conviction relief is based by a preponderance of the evidence. I.C.R. 57(c); *Grube v. State*, 134 Idaho 24, 27, 995 P.2d 794, 797 (2000).

#### DISCUSSION

The Petition in this case was not verified but the affidavit filed in support was sworn.<sup>17</sup> The affidavit filed in support of the Petition recites portions of the trial transcript. These references to the trial transcript establish swabs from the victim were taken and put in a “rape kit.” Paragraph 15 of the affidavit states “no DNA tests were performed to my knowledge, as the DNA technology in 1994-95 was not as sophisticated, and sensitive, as it is, today.”<sup>18</sup> The

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<sup>17</sup> Affidavit of Nelson, 2/3/2011.

<sup>18</sup> *Id.*, ¶ 15.

Respondent admits the underwear and rape kit were admitted into evidence, that the type of DNA testing required was not available at the time of trial, and that DNA testing had not been completed on these items prior to the filing of This Application.<sup>19</sup>

State's Exhibit 1, the Forensic Case Report, identifies evidence received and tested pursuant to this Petition as "vaginal swabs" and "anal swabs" along with reference material from Gregory Nelson.<sup>20</sup>

Respondent's Exhibit 1 states the partial Y-STR DNA profile on the vaginal swabs match Nelson's complete Y-STR DNA profile with a high degree of certainty and Mr. Nelson and his paternal relatives cannot be excluded as the source of the DNA.<sup>21</sup> This exhibit also states the DNA profile on the anal swabs match Nelson's DNA profile with a high degree of certainty and Mr. Nelson and his paternal relatives cannot be excluded as the source of the DNA.<sup>22</sup> Although the report does not exclude Mr. Nelson's paternal relatives, Mr. Nelson has not shown in light of all admissible evidence presented for this hearing that there remains a genuine issue of fact whether he is the person who committed the offense.<sup>23</sup>

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<sup>19</sup> Answer, ¶¶1-2.

<sup>20</sup> Respondent's Exhibit 1, p. 1. The Supplemental Motion for Post-Conviction Relief filed pro se by the Petitioner on 6/21/2012, after the DNA testing was completed, alleges evidence in the "rape kit" identified by Petitioner as Q13, which contained the victim's genital swabbings, did not match the inventory of items DNA tested in Respondent's Exhibit 1. Mr. Nelson contends the Sorenson Forensics inventory of the items DNA tested did not match the inventories of items from the "April 7, 1994 inventory of the 'Sexual Assault Evidence Kit....' from/by Frederick Whitehurst." The Petitioner then acknowledges that tampering with the "rape kit" was raised and adjudicated in his First Application for Post-Conviction Relief.

Subsequent to that allegation, the Petitioner filed Exhibit B to the Petitioner's Objection to Respondent's Motion for Summary Dismissal, which is a letter that purports to be a letter to Mr. Nelson from George Schiro, Consulting Forensic Scientist for Forensic Science Resources. That letter addresses the varying descriptions of the evidence between agencies raised by Mr. Nelson. This letter was not sworn or presented by way of affidavit. The Petitioner's Second Affidavit states in paragraph 15:

The DNA expert's involvement in this case has not concluded. The DNA expert is requesting additional information in the form of documents.... The DNA expert requested documents to evaluate, "cross-contamination" aspects in handling the tested (fn) evidence.... For now, the DNA expert's name, and location, shall remain confidential to me, and Theresa [Martin].

There was no subsequent affidavit filed by counsel, only the Objection with Exhibits A and B. The requirement at summary judgment is that the Petitioner must support his allegations by affidavit or equally reliable evidence. *Ivey v. State*, 123 Idaho at 80-81. Although Exhibit B of the Objection was not sworn, the Court considers the opinion in Exhibit B reliable, so the Court considered that exhibit in determining whether there is a genuine issue of fact remaining.

The balance of the Second Affidavit contains the Petitioner's legal conclusions, especially interpreting statutes, and the Court is not required to accept the Petitioner's legal conclusions. The Petitioner's statement of innocence to his probation officer, Mike Percival, set forth in the attached affidavit, does not raise a material issue of innocence given the overwhelming evidence to support his conviction at trial and found in the direct appeal.

<sup>21</sup> Respondent's Exhibit 1, p. 1.

<sup>22</sup> *Id.*

<sup>23</sup> The Petitioner presented Exhibit A to the Petitioner's Objection to Respondent's Motion for Summary Dismissal is a letter that purports to be a letter to Mr. Nelson from George Schiro, Consulting Forensic Scientist for Forensic Science Resources. This letter was not presented by way of affidavit and is not otherwise sworn. While the First

While the Petitioner tries to raise material issues of fact in his affidavits and exhibits to question the validity of the testing and results, the expert opinions he offered support the State's evidence. Exhibit B contains the conclusion of Mr. Schiro, the Petitioner's DNA Expert, that "Upon review of the documents that you sent to me I do not think that there was tampering of the rape kit contents."<sup>24</sup> Exhibit A shows Mr. Schiro reviewed the evidence which included portions of the Forensic Case Report (Respondent's Exhibit 1) provided by the Petitioner and concluded,

...in this case, based on the current Y STR results, you cannot be excluded as a potential source of the Y STR DNA profile obtained from the swabs.... A review of the notes indicates that Sorenson Forensics carried out the testing properly and the results of the test are valid. Their selection of the Yfiler kit was proper, given the amount of female DNA present.... Based on the current state of DNA testing and the information provided so far, I will not be able to assist you with your case.<sup>25</sup>

The Court has considered Mr. Nelson's First Affidavit requesting CODIS STR DNA testing.<sup>26</sup> The Petitioner also filed his Second Affidavit explaining why he feels that Y-STR was an inadequate test, explaining why he feels a "STR DNA identification analysis" should have been conducted, and his legal conclusions about the type of DNA testing contemplated or required by the Idaho legislature and the DNA testing statutes.<sup>27</sup> Beyond laying the foundation for the evidence presented in Exhibits A and B to the Objection, this affidavit contains inadmissible hearsay, information outside the Petitioner's personal knowledge, and the Petitioner's legal conclusion and, therefore, are not considered further. To the extent that Mr. Nelson has read articles on DNA testing, even specifically cited *National Geographic* articles, he would still not qualify as an expert capable of rendering an admissible opinion under the Idaho Rules of Evidence. Therefore, hearsay statements and the Petitioner's factual and legal conclusions related to CODIS STR DNA testing in the First and Second Affidavits do not present a genuine issue of material fact that the Petitioner was not the one who committed these offenses.

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Affidavit of Mr. Nelson states, at ¶8, that "A DNA expert is being consulted," and the Second Affidavit, at ¶6, identifies the documents sent to "a DNA expert," the affidavits do not swear this was the response to that inquiry and the letter is not sworn by the proponent of the letter. The Petitioner identifies he "received a letter from the DNA expert on August 24, 2012" and quotes portions of the letter in ¶¶10 and 11 of the Second Affidavit. Therefore, the Court has considered this letter reliable although it is hearsay, given the incarcerated status of the Petitioner and how closely the document matches Mr. Nelson's Second Affidavit.

<sup>24</sup> Petitioner's Objection, Exhibit B, Letter to Mr. Nelson from George Shiro, Consulting Forensic Scientist for Forensic Science Resources.

<sup>25</sup> Petitioner's Objection, Exhibit A, Letter to Mr. Nelson from George Shiro, Consulting Forensic Scientist for Forensic Science Resources.

<sup>26</sup> First Affidavit, ¶ 7.

<sup>27</sup> Second Affidavit, ¶¶16-18.

The Court has considered the admissible evidence presented by the Petitioner in the light most favorable to the Petitioner, but still finds the results in Respondent's Exhibit 1 are valid, the correct testing method was used, and the Mr. Nelson is not excluded as one who committed the crimes for which he was convicted. The Court has also considered all of the admissible evidence presented by the Petitioner, and finds no need for continued testing of these items because he has not shown the result would be substantially different from or not cumulative to other items in the "rape kit."

#### CONCLUSION

Considering all admissible evidence presented for this hearing as discussed above, the Petitioner has not shown there remains a material issue of fact related to whether he was the person who committed the offense. On the basis of This Application, and the present record before it, the Court is satisfied that Petitioner is not entitled to post-conviction relief from the judgment under the provisions of I.C. §19-4902, and that no purpose would be served by any further proceedings. The Petition is DISMISSED.

IT IS SO ORDERED.

DATED this 12<sup>th</sup> day of December, 2012.

  
\_\_\_\_\_  
LYNN G. NORTON  
District Judge



**CERTIFICATE OF SERVICE**

The undersigned authority hereby certifies that on the 12<sup>th</sup> day of December, 2012, I caused to be served a true and correct copy of the **DECISION AND ORDER GRANTING SUMMARY DISMISSAL**, as notice, pursuant to Rule 77(d) I.C.R., served, by the method indicated below, to each of the attorneys of record in this cause:

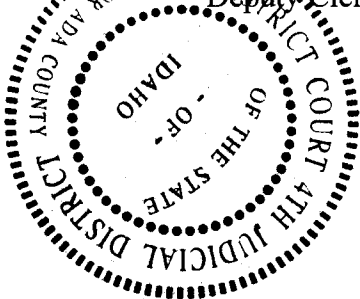
JULIANNE MEEHAN  
DEPUTY PROSECUTING ATTORNEY  
ADA COUNTY PROSECUTING ATTORNEY  
VIA—EMAIL

THERESA A. MARTIN  
ATTORNEY AT LAW  
1693 SPRING VALLEY LN, STE 200  
MERIDIAN, ID 83642

GREGORY J. NELSON  
26.201 IMSI B-87  
POST OFFICE BOX 51  
BOISE ID 83707-0051

CHRISTOPHER D. RICH  
Clerk of the District Court

By: *Danielle Horvath*  
Deputy Clerk

A circular seal with a dotted border. The outer ring contains the text "DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO". The inner circle contains the text "OFFICE FOR ADA COUNTY".

DEC 12 2012

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,

Petitioner,

**VS.**

STATE OF IDAHO,

Respondent.

Case No. CV-PC-2011-02496

## JUDGMENT

Based upon the Decision and Order Granting Summary Dismissal entered by the Court on December 12, 2012, this Court enters judgment on behalf of the Respondent and denies the Petition for Post-Conviction Relief.

DATED this 12<sup>th</sup> day of December, 2012.



LYNN G. NORTON  
District Judge

**RULE 54(b) CERTIFICATE**

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the Court has determined that there is no just reason for delay of the entry of a final judgment and that the Court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED this 12<sup>th</sup> day of December, 2012.



District Judge

CERTIFICATE OF MAILING

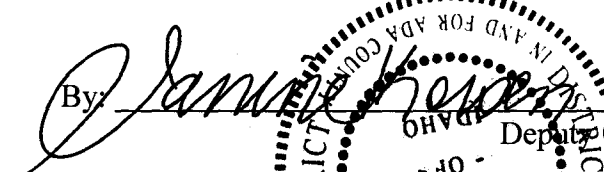
I HEREBY CERTIFY that on this 12<sup>th</sup> day of December, 2012, I mailed (served) a true and correct copy of the within and foregoing instrument to:


JULIANNE MEEHAN  
DEPUTY PROSECUTING ATTORNEY  
ADA COUNTY PROSECUTING ATTORNEY  
VIA—EMAIL

THERESA A. MARTIN  
ATTORNEY AT LAW  
1693 SPRING VALLEY LN, STE 200  
MERIDIAN, ID 83642

GREGORY J. NELSON  
26.201 IMSI B-87  
POST OFFICE BOX 51  
BOISE ID 83707-0051

CHRISTOPHER D. RICH  
Clerk of the District Court

By:  \_\_\_\_\_  
Deputy Clerk



NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 446

**JAN 23 2013**

CHRISTOPHER D. RICH, Clerk  
By CHRISTINE SWEET  
DEPUTY

**THERESA A. MARTIN**  
THE LAW OFFICE OF THERESA A. MARTIN  
Conflict Counsel for Ada County Public Defender  
380 S. 4<sup>th</sup> Street, Suite 101  
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ISBN: 7781

Attorney for Petitioner/Appellant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY JOSEPH NELSON,	)	
	)	Case No. CV-PC-2011-02496
Petitioner/Appellant,	)	
vs.	)	<b>NOTICE OF APPEAL</b>
	)	
STATE OF IDAHO,	)	
	)	
Respondent/Appellee.	)	
_____	)	

TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, ADA COUNTY PROSECUTING ATTORNEY AND THE CLERK OF THE ABOVE ENTITLED COURT.

**NOTICE IS HEREBY GIVEN THAT:**

1. The above named Appellant, GREGORY JOSEPH NELSON, appeals against the above named Respondent to the Idaho Supreme Court from the Judgment, entered in the above entitled action on the 12th day of December, 2012, the Honorable Judge Lynn G. Norton, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Code § 19-4909 and Rule 11(a)(1), I.A.R.

☐ This is an EXPEDITED APPEAL pursuant to I.A.R. 12.2.

3. A preliminary statement of the issues on appeal which the Appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal.

(a) Whether the Court erred by denying Petitioner's Petition for Post Conviction Relief.

(b) The Appellant reserves the right to present other issues after the review of the clerk's record and report's transcripts to be prepared in this appeal.

4. Has an order been entered sealing all or any portion of the record? If so, what portion?

Yes. Presentence Investigation Report.

5 (a) Is a reporter's transcript requested? Yes.

(b) The Appellant requests the preparation of the following portions of the reporter's transcript in ☒ hard copy ☐ electronic format ☐ both (check one):

The entire reporter's standard transcript as defined in Rule 25(a), I.A.R. supplemented by the following:

(1) Motion hearing held on December 6, 2012. (P. Tardiff – Court Reporter)

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

None.

7. Civil Cases Only. The Appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court.

None.

8. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Penny Tardiff  
Court Reporter  
Ada County District Court  
200 W. Front Street  
Boise, ID 93702

(b) (1) ☐ That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) ☒ That the Appellant is exempt from paying the estimated transcript fee because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

(c) (1) ☐ That the estimated fee for preparation of the clerk's or agency's record has been paid.


(2) ☒ That the Appellant is exempt from paying the estimated fee for the preparation of the record because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

(d) (1) ☐ That the appellate filing fee has been paid.

(2) [X] That Appellant is exempt from paying the appellate filing fee because Appellant is indigent and represented by appointed counsel, conflict counsel appointed by the Ada County Public Defender.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED THIS 23<sup>rd</sup> day of January, 2013.

  
\_\_\_\_\_  
THERESA A. MARTIN  
Attorney for Petitioner/Appellant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on this 23<sup>rd</sup> day of January, 2013, I served a true and correct copy of the foregoing NOTICE OF APPEAL to:

Ada County Prosecutor  
200 W. Front Street, Room 3191  
Boise, ID 83702  
Facsimile: (208) 287-7709

☒ Hand Delivery  
☒ U.S. Mail  
\_\_\_\_ Facsimile

Penny Tardiff  
Court Reporter  
200 W. Front Street  
Boise, ID 83702

☒ Hand Delivery  
\_\_\_\_ U.S. Mail  
\_\_\_\_ Facsimile

Office of the Attorney General  
PO Box 83720  
Boise, ID 83720-0010

\_\_\_\_ Hand Delivery  
☒ U.S. Mail  
\_\_\_\_ Facsimile

  
\_\_\_\_\_  
Theresa A. Martin

JAN 30 2013

CHRISTOPHER D. RICH, Clerk  
By ANNAMARIE MEYER  
DEPUTY

**THERESA A. MARTIN**  
THE LAW OFFICE OF THERESA A. MARTIN  
Conflict Counsel for Ada County Public Defender  
380 S. 4<sup>th</sup> Street, Suite 101  
Boise, ID 83702  
Telephone: (208) 336-9401  
Facsimile: (208) 342-3077  
ISBN: 7781

Attorney for Petitioner/Appellant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

GREGORY JOSEPH NELSON,	)	
	)	
Petitioner/Appellant,	)	Case No. CV-PC-2011-02496
	)	
vs.	)	
	)	<b>EX PARTE MOTION TO APPOINT</b>
STATE OF IDAHO,	)	<b>STATE APPELLATE PUBLIC</b>
	)	<b>DEFENDER ON DIRECT APPEAL</b>
Respondent.	)	
	)	

COMES NOW The Petitioner/Appellant, GREGORY JOSEPH NELSON, by and through his attorney of record, Theresa A. Martin, Conflict Counsel for the Ada County Public Defender and moves this Court for its Order appointing the Idaho State Appellate Public Defender's Office to represent the Petitioner/Appellant in his appeal.


This motion is based on Petitioner/Appellant's attorney of record having been appointed as conflict attorney for the Ada County Public Defender, the Petitioner/Appellant having elected

EX PARTE MOTION TO APPOINT STATE APPELLATE PUBLIC DEFENDER ON DIRECT APPEAL—P.1



to pursue direct appeal in the above-entitled matter, and the Petitioner/Appellant's continued indigence.

DATED THIS 30<sup>th</sup> day of January, 2013.

  
\_\_\_\_\_  
THERESA A. MARTIN  
Attorney for Petitioner/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of January, 2013, I caused to be served a true copy of the foregoing MOTION by the method indicated below, and addressed to each of the following:

Ada County Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, ID 83702  
Facsimile: (208) 287-7709

\_\_\_\_ U.S. Mail, Postage Prepaid  
☒ Hand Delivered  
\_\_\_\_ E-mail  
\_\_\_\_ Facsimile

  
\_\_\_\_\_  
Theresa A. Martin

EX PARTE MOTION TO APPOINT STATE APPELLATE PUBLIC DEFENDER ON  
DIRECT APPEAL—P.2

000276

**RECEIVED**  
**JAN 30 2013**  
**Ada County Clerk**

**FEB 04 2013**

**CHRISTOPHER D. RICH, Clerk**  
**By JANINE KORSEN**  
**DEPUTY**

**THERESA A. MARTIN**  
THE LAW OFFICE OF THERESA A. MARTIN  
Conflict Counsel for Ada County Public Defender  
380 S. 4<sup>th</sup> Street, Suite 101  
Boise, ID 83702  
Telephone: (208) 336-9401  
Facsimile: (208) 342-3077  
ISBN: 7781

Attorney for Petitioner/Appellant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF**  
**THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**


GREGORY JOSEPH NELSON,	)	
	)	
Petitioner/Appellant,	)	Case No. CV-PC-2011-02496
	)	
vs.	)	
	)	<b>ORDER APPOINTING STATE</b>
STATE OF IDAHO,	)	<b>APPELLATE PUBLIC DEFENDER ON</b>
	)	<b>DIRECT APPEAL</b>
Respondent.	)	
	)	

The above-named Petitioner/Appellant, GREGORY JOSEPH NELSON, being indigent and having hereto been represented by Theresa A. Martin, as conflict attorney for the Ada County Public Defender's Office, in the District Court, and said Petitioner/Appellant having elected to pursue a direct appeal in the above-entitled matter;

**ORDER APPOINTING STATE APPELLATE PUBLIC DEFENDER ON DIRECT APPEAL—**  
P. 1

**IT IS HEREBY ORDERED, AND THIS DOES ORDER,** That the Idaho State Appellate Public Defender is appointed to represent the Petitioner/Appellant, GREGORY JOSEPH NELSON, in all matters pertaining to the direct appeal.

DATED THIS 3<sup>rd</sup> day of February, 2013.

  
\_\_\_\_\_  
JUDGE

CERTIFICATE OF MAILING

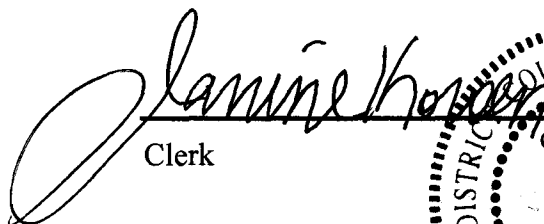
I HEREBY CERTIFY that on this 4<sup>th</sup> day of Feb., 2013, I caused to be served a true copy of the foregoing ORDER by the method indicated below, and addressed to each of the following:

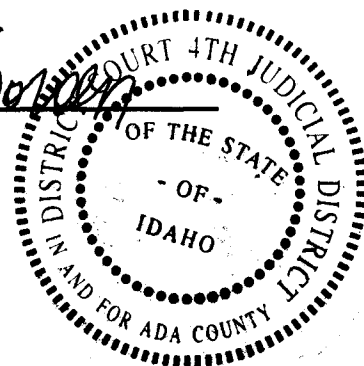
Ada County Prosecuting Attorney  
200 W. Front Street, Room 3191  
Boise, ID 83702  
Facsimile: (208) 287-7709

☐ U.S. Mail  
☒ Interdepartmental Mail  
☐ Facsimile

Theresa A. Martin  
380 S. 4<sup>th</sup> St. Ste. 101  
Boise, ID 83702  
Facsimile (208) 342-3077

☒ U.S. Mail  
☐ Hand Delivery  
☐ Facsimile

  
Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

\_\_\_\_\_  
GREGORY JOSEPH NELSON, )  
 ) Supreme Court Docket  
Petitioner-Appellant, ) 40661  
 )  
vs. )  
 )  
STATE OF IDAHO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

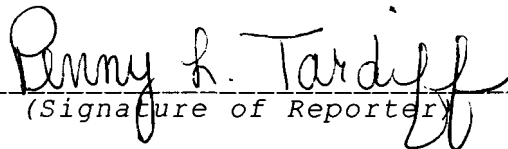
NO. \_\_\_\_\_ FILED  
A.M. 8:00 P.M. \_\_\_\_\_

FEB 26 2013

CHRISTOPHER D. RICH, Clerk  
By BRADLEY J. THIES  
DEPUTY

NOTICE OF TRANSCRIPT FILED

Notice is hereby given that on January 31, 2013, I  
lodged a transcript 15 pages in length for the  
above-referenced appeal with the District Court Clerk of  
Ada County in the Fourth Judicial District.

  
\_\_\_\_\_  
(Signature of Reporter)

\_\_\_\_\_  
Penny L. Tardiff CSR

\_\_\_\_\_  
1/31/13

Hearing Date: December 6, 2012

BT

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 40661

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:


There were no exhibits offered for identification or admitted into evidence during the course of this action.

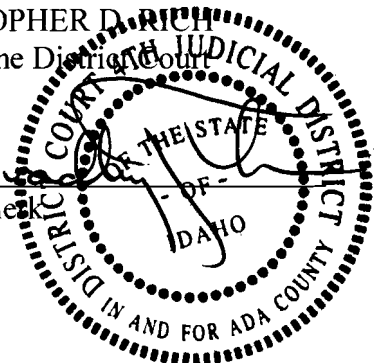
I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Order to Seal Exhibit #1 of the Respondent's Motion for Summary Dismissal (Filed Under Seal), filed July 6, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 26th day of February, 2013.

CHRISTOPHER D. RICH  
Clerk of the District Court

By   
Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,  
  
Petitioner-Appellant,  
vs.  
  
STATE OF IDAHO,  
  
Respondent.

Supreme Court Case No. 40661

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

LAWRENCE G. WASDEN

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

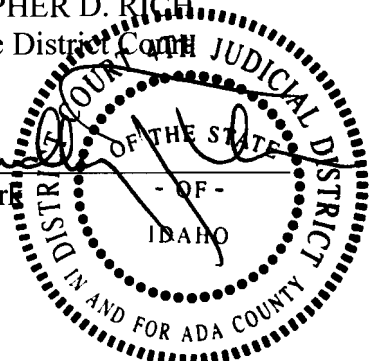
BOISE, IDAHO

Date of Service: FEB 26 2013

CERTIFICATE OF SERVICE

CHRISTOPHER D. RICH  
Clerk of the District Court

By Bradley  
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GREGORY JOSEPH NELSON,

Petitioner-Appellant,

vs.

STATE OF IDAHO,

Respondent.

Supreme Court Case No. 40661

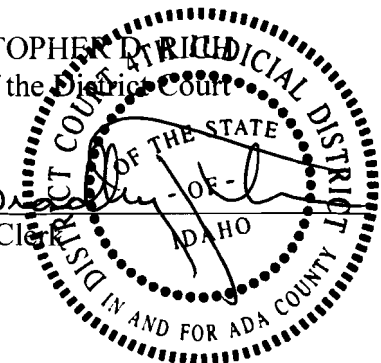
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 23rd day of January, 2013.

CHRISTOPHER D. RICH  
Clerk of the District Court

By B. Rich  
Deputy Clerk



CERTIFICATE TO RECORD

000283